PROCEEDINGS

IN

THE SENATE

ON THE

INVESTIGATION OF THE CHARGES PREFERRED AGAINST

HORACE G. PRINDLE,

COUNTY JUDGE AND SURROGATE OF CHENANGO COUNTY.

IN PURSUANCE OF A MESSAGE FROM HIS EXCELLENCY THE GOVERNOR, TRANSMITTING THE CHARGES AND RECOMMENDING HIS REMOVAL.

VOLUME II.

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and allowing such an account is conclusive upon the county." It also decides that it is a judicial act; the taxing of this bill by the proper officer is a judicial act, and that that is conclusive until it is repudiated in a proper way; but it also decides the other question, I maintain, and if you read the opinion of Judge Bronson, you will find that the action of a board of supervisors in a matter over which they have jurisdiction is conclusive.

Mr. D. P. Wood—What is the title of that case?

Mr. Glover—"*Supervisors of Onondaga* v. *Briggs*." Judge Bronson goes further in this opinion, and I wish to read a few sentences here in support of the proposition that Judge Prindle had a right to charge for his services in drawing these papers? it not being official business, truly speaking. Judge Bronson said upon this question in regard to the board of supervisors: "A good deal had been said to prove that the taxation of a bill of costs is not a technical judgment. The labor was unnecessary; for no such thing had been pretended. But still it is a judicial act. It is a duty which has been confided to judicial officers to be exercised in a judicial way. The parties and their proofs are to be heard; and their rights are to be settled by a judicial determination. It is of the same general nature as are the decisions made by a judge, or commissioner in proceedings under the insolvent laws, and act to punish fraudulent debtors, between landlord and tenant, and the many other cases which might be enumerated. They are all judicial determinations, which are conclusive upon the parties until they have been reversed, vacated, or set aside in the forms prescribed by law. They cannot be attacked in a collateral action, save where the Legislature has so expressly provided. This is a principle of universal application. It extends alike to the decisions of the highest court, and the humblest officer in the State who has been intrusted with the exercise of judicial powers. However desirable it may seem in a particular case to disregard the rule, it cannot be broken down without doing a great wrong to the community. When a matter of right between A and B has been settled in the form prescribed by law, whatever that form may be, if the determination be not conclusive so long as it remains in force, if either party may at his pleasure disregard it and litigate the matter over again in a collateral action, we shall have nothing but endless legal strife and controversy. No community could longer endure such a state of things as this new doctrine would be likely to bring about. I do not understand that more than one member of the Court of Errors has expressed an opinion in favor of it; and I do not doubt

that upon further reflection he would concur with me, that it is better to bear a particular evil than to open the door for general mischief."

Now, I wish to call attention to a further part of that opinion to show the close construction which the judge gives to the statute: "In the first place," he says, "I will inquire what is forbidden by the statute."

"No judge or other officer 'to whom any fees or compensation shall be allowed by law for any service, shall take or receive any other or greater fee or reward for such service but such as is or shall be allowed by the laws of this State' (2 R. S. 650, § 5). This prohibits the officer from taking a greater fee or reward for some service rendered by him than the law allows for such service, and it only extends to cases where a fee or compensation is allowed by law for that particular service. It has nothing to do with any service not coming within the fee bill; as where an attorney charges his client for a journey, or for drawing or copying papers for which no fee or compensation has been specially provided by law. For certain services the Legislature has given to officers a specified fee or reward, and has forbidden them to take more. But where no fee has been prescribed by law the Legislature has not undertaken to say how much or how little shall be charged for any service which may be rendered. That is left to be settled by the principles of the common law.

"The sixth section provides that 'no fee or compensation allowed by law shall be demanded or received by any officer or person for any service, unless such service was actually rendered by him.' This provides for the case where the 'fee or compensation allowed by law,' for some service, had been taken by an officer when the service had not, in fact, been rendered.

"Both sections are confined to cases where a fee or compensation is allowed by law for the service charged; and in such cases the officer is forbidden to take more than the law allows where the service has been rendered, or to take any thing where the service was not rendered. And the violation of either section is made a misdemeanor, and the officer is liable to the party aggrieved for treble the damages sustained. (§ 7.) These provisions in relation to the taking of fees in civil cases, apply also to the taking of fees for services in criminal cases. (2 R. S. 753, § 17.)

"If we apply what has been said to the facts as they appeared on the last trial, the plaintiff cannot, in any event, recover but a very small sum under this statute. The charges, which were rejected on

the ground that the services had not been rendered, amounted to only $37. All the other charges, which were disallowed by the circuit judge, were for services which, though actually rendered, were said not to be such services as come within the fee bill."

Now these were services for subpœna tickets which the district attorney charged for, and yet the judge held that he had a right to charge for them; that they were not within the fee bill, and not being strictly within that, that he had a right to charge for them, and held that the action brought by the supervisors to recover back could not be maintained. It has been decided, too, over and over again, that one board of supervisors cannot act upon what has been acted upon by their predecessors; that the matter having been once before the board, a matter within their jurisdiction, over which they had control, that there can be no action by a subsequent board reviewing or changing that action; now, then, we say that this board of supervisors had no possible power to review or change the action which had been taken in relation to these bills. Such I now suppose to be the settled law of this State.

Now in conclusion, gentlemen, this matter of these charges against Judge Prindle has been one, it seems from the charges they bring here, of some years' standing. The surrogate's office is a public office; the records are always open to inspection. Here are these various acts which it is not claimed have been done secretly, but publicly, above board, so that everybody should know of them; no concealment. Here is this statute which the counsel has cited here, by which not only the county judge, but the presiding officer of every criminal court, is bound to call the attention of the grand jury to extortion. Now, if these are seriously grave charges, unprotected on his part by the law, why has there been this delay? Twice has Judge Prindle been elected by the people of the county of Chenango since some of these charges were made, and since some of these wrongs are said to have occurred. Grand jury after grand jury has sat in your county since these wrongs were alleged to have been done; but it was reserved until last fall, when another election was about to take place, for this matter to be brought forward. In the convention which nominated him, out of sixty-three votes he received on the first ballot thirty-nine, and then after these charges had been paraded before that convention with all the power which man could use, he received an additional vote of ten, making forty-nine out of sixty-three. Unfortunately, my friend upon the other side was a candidate for district attorney, and was not nominated. This was such an election, I will venture

to say, as many of you never saw in a country town; perhaps some of you who live in cities have not seen as bitter an election; but I have never during my life seen one so bitter and so vindictive as the one in which Judge Prindle was pursued from the time of that nomination. Meetings were held all over the county, and addressed by the defeated candidate for district attorney and other men — witnesses here upon the stand — setting forth these charges; affidavits were made and scattered broadcast all over the county; a flaming pamphlet got up, entitled "The Mill of Extortion," and placed in the hands of every man, woman and child, that they could get into the hands of throughout the entire county; and yet, with all these varied efforts and expense of money (as appears here from the evidence), the people of the county of Chenango stood by Judge Prindle and re-elected him for the third time. I tell you, senators, it is not the people of that county that are calling for his removal; it is a few malcontents whose bitter feelings are such to-day that it would rejoice them could they see him strung up to a gibbet. They have sought to destroy him in every way; they sought to degrade him before the county of Chenango by these charges; they sought to degrade him and his office before the board of supervisors — an irresponsible board. They have sought to degrade him here; not by fair evidence — for I can call your attention to this evidence in relation to these charges as to the bonding of the town of Greene and the town of Smithville, and ask you if there is evidence even to raise the suspicion that Judge Prindle had done any wrong in that? I appeal to you whether there is the least particle of evidence to show that there should have been even a suspicion that he did a wrong in the bonding of these two towns. What does he tell Welch, what does he tell Birdsell? "I shall give this matter a fair, clear examination, and if it is right that I should decide in favor of bonding that town, I shall do it."

The aid of the grand jury has been sought for the purpose of destroying this man. Day after day was spent by the then district attorney, sitting opposite me, using the entire power of the county for the purpose of degrading and destroying this man and his family. And yet, a grand jury of that county, convened in the ordinary way, refused to be the instruments of vengeance in the hands of these men. I tell you, senators, that the feeling of the people of that county is such to-day, that, in my humble judgment, if an election were to take place to-morrow, Horace G. Prindle would triumphantly be re-elected county judge. It is not the people that

are asking for this removal; it is not a fair minority of the people. It is the men who, as I have said, have pursued him, and who to-day desire to see him and his family degraded and beggars. Why these old charges? — when the district attorney and others signed a paper, a year ago last fall, after most of the wrongs were alleged to have occurred, in which you will see when it is presented (as we shall present it), in which they ask the board of supervisors of the county to give him $4,000 salary, and say he is an honest judge, he is a faithful judge, he is a hard-working judge! That is the character of the petition. That was the character and standing of the man at that time, and would have been to-day, had there not been other ambitious ones who desired his place. But I have talked longer than I intended to. Now, I desire simply to say, in conclusion, that this investigation to this respondent is a serious matter. It involves his life; his reputation; his all. And we ask you, senators, in the consideration of this matter, to look at it with the gravity that it demands; we ask you to hold the scales carefully, and say that this man shall not be stricken down, unless there is ample cause for it; we ask you (as I have no doubt you will do) that you give it that serious consideration which its merits demand, which the consequences to this respondent entitle it to, for, as I have remarked, his all is involved.

Some of these charges we do not deny. We admit the fact of his practicing as a counsel; we cannot deny it, but it was a matter entirely thoughtless with him, without thought that there was such a statute; and I will venture to say that you might have gone through the State of New York previous to this investigation, and nine lawyers out of every ten would have told you they were not aware of the existence of such a statute. My friend upon the right (Mr. Mygatt), upon the statute being published in the county paper, "The Union," asked if I was aware of such a statute, saying that he was not. I read the statute during my clerkship, and I undoubtedly read that section; but the very day before it was published I had an argument with a gentleman, in which I claimed that a judge had a right to practice in any court not his own. I believed it, and if I had been judge or surrogate, I should undoubtedly, without thought, have taken a case just as Judge Prindle did. Nobody, it seems, thought of objecting to his appearing at the circuit in the trial of these cases. We do not undertake to deny that he has violated the statute in that, but it was no corrupt violation. No thought entered his mind that there was

such a statute; and, as I understand him, these men urged him to take this business, and he went on and did it.

One thing has escaped my attention, and that is in reference to our proof in relation to the bonds of this old lady. Now, I start with this proposition in relation to that; there is no legal crime in it, no legal wrong. I believe it is not claimed anywhere that there is a statute which forbids a county judge or surrogate from buying securities. But it will be claimed that he took advantage of his position. Now, I understand the facts of that case to be just these: This old lady came there, had this will proved, and after it was through with she spoke about these bonds, saying she had some bonds to sell and wanted the money on them; that this grandson was going west the next day and she wanted the money that day very much. Judge Prindle told her there was a premium upon the bonds, and she could get that premium by sending the bonds to New York. He will tell you he did not know that there was any party or any institution in town that bought these bonds. His business dealings were with the bank of Chenango, which bank never bought these securities. He told her she could get the premium, but she wanted the money then, because she wanted this young man to have it, saying that he insisted he could get for it in the western country twenty or twenty-five per cent. Judge Prindle told her he would buy them of her. The facts are these: He held a mortgage against a man in the town of Norwich that had been due for some years. When that became due he pressed collection; when these United States bonds could have been bought at par; they were at par all around then. He pressed collection, and with the statement to the mortgagee that he desired to place the money which was due on the mortgage in United States bonds; that this man, Dibble, could not pay it; did not desire him to press collection, and agreed that if he would let it stand he would pay him in United States bonds at par. Now, the judge, thinking this a good opportunity for him to get these bonds for Dibble, bought them. These went to pay that mortgage; were indorsed upon that mortgage as part payment. These are the facts, as I understand, in regard to that. He bought them without a thought of taking advantage of his position.

I repeat, gentlemen, this prosecution involves the *all* of this respondent; his all now and his all in the future of life; his standing with his fellow-men. And we think we shall be able to satisfy you that if he has committed errors at all, they have been errors of the

head and not of the heart; that there has been no corrupt nature, no corrupt action on his part, and that he is entitled to your decision in his favor.

LEWIS S. HAYS, a witness called in behalf of the respondent, being duly sworn, testified as follows:

By Mr. E. H. PRINDLE:

Q. Where do you reside, Mr. Hays? A. Smithville Flats, Chenango county.

Q. Were you a director of the Smithville Railroad Company? A. The Central Valley Railroad Co.; I was.

Q. This Smithville company spoken of? A. Yes, sir.

Q. Did you procure the bonds to be printed? A. I did; in New York.

Q. Will you state how you proceeded to do so? A. I went to New York and ordered the engraving and printing of the bonds, after consultation with our counsel, Mr. Isaac S. Newton, for the purpose of using them in building our road and to have them ready, as I had formed my plan, if I could, of placing our road under contract, and using these bonds in payment for the construction of the road; we had had very bitter contests and outside working and influence to prevent us bonding our town and building our road, and we wished, if possible, to make sure of it and pay the bonds on the contract, and make a sure thing of having the road.

Q. You had a consultation with your counsel, Mr. Newton, you say? A. Yes, sir.

Q. You may state that? A. I had various conversations with him in reference to it; the sum of them was just this, that the bonds if used by the company, paid out or used on the contract, would be valid in the hands of third parties; that any person who took the contract to build the road would be practically compelled to build it; that we could make a sure thing of having the road; and in order to do that, I, of course, had to take the chances of whether our town would be decided bonded or not. I took those chances myself, and Mr. Crozier; I consulted with him as president; I went to New York and ordered the printing of the bonds.

Q. Did you know or have any intimation as to what the decision was to be in advance of the time it was to be made? A. None whatever; I took the chances; Mr. Crozier and myself did; I had been director of the Greene railroad; had been familiar with this whole matter, and the decision of Judge Prindle in regard to the

bonding of the town of Greene, and knew that it involved the same decision; my judgment was that he would not decide one case one way, and another another; and I saw fit to take the chances.

Q. Did Judge Prindle know any thing about your getting these bonds printed, or have any intimation of it? A. None whatever.

Q. Will you state how you came to have one of these men sign the coupons in advance? A. After going to New York and ordering the engraving of these bonds; after giving Mr. Horsford the form in which to have them engraved, he says to me, "Mr. Hays, it will save you a great deal of work in having these bonds signed, if you will have the name of one of your commissioners lithographed in the coupons;" I told him our town was not bonded, that we were taking our risks on this thing, and furthermore I didn't know as the thing would be legal to have the name printed in the coupons, and that he might make the coupons in blank; I came up the river to this city, and in coming up it occurred to me that if I could have these coupons signed in advance, it would very much facilitate the work of issuing the bonds; make shorter work of it when the thing did come to time, if we secured the bonding of the town; I went to Norwich and stopped there for the purpose of consulting with Mr. Newton as to whether, if I had these coupons signed by a person and that person subsequently was appointed a commissioner and signed the bond on the face of it, signing the coupon merely previously and signing the bond on the face of it and issued it, whether these coupons and the bond would be valid and good or not; I consulted with him at his office; walked down the street and off in a side street to his house that evening and talked the matter over; he says to me, "there is no point in it; the bond will be perfectly good;" I had left directions in New York to have the bonds sent to me in care of Mr. Newton at Norwich; they came by the American Express; I went there and got the bonds and carried them to Smithville; and after talking with Mr. Crozier, we took the chance of having Mr. Rhodes, who had been one of our citizens for a long time, a very reliable man and a man against whom we could conceive of no objection as a commissioner, we took the chance of having him sign those coupons; took the chances as to whether Judge Prindle would bond our town and appoint that man one of the commissioners; we did it on our own responsibility without any knowledge on the part of Judge Prindle, and in fact I might say of scarcely anybody else. That is the whole story and all of it.

Q. Now can you state about how long you had those bonds prepared and all ready to use when this decision was made? A. Well,

I should say eight weeks; perhaps longer than that; the thing was all ready to get up at a moment's notice.

Q. You knew nothing as to whom Judge Prindle was to appoint as commissioners? A. No, sir.

Q. Now, Mr. Hayes, will you go on and state what you know in relation to Judge Prindle's not appointing a man in the east part of Smithville, suggested by the other side? A. I was in Norwich some time previous to this decision; meeting Mr. Crozier at the hotel, he says to me, "Don't you wish to go over and see Judge Prindle," and I went over with him to call on the judge; and after chatting a few moments he says, "By-the-by, those anti-railroad men in the east end of your town want I should appoint a man that they shall name as one of the commissioners if I shall bond the town;" I says, "That is rather singular on their part, after fighting about it so strongly, to make that request." "Well," says he, "I told them if they named a railroad man, I will probably appoint the man that they name;" I thought a minute, and says to him, "I don't see any objection, provided they name a man that was in favor of bonding the town; but if they didn't I couldn't conceive how he could possibly appoint a man after deciding to bond the town, in case he should decide to bond; a man who was opposed to the bonding; and I think either Mr. Crozier or myself inquired who it was that they wanted appointed; he got up, went to the cases on the west side of the office, and from a pigeon-hole near the middle of those cases took out a handful of papers, and after looking them over and separating them, finally took from them one paper, opened it, and read off the name of 'Benedict' or 'Briggs;' something of that sort; I forgot the name exactly;" he says, "they want this man appointed;" a man that was a stranger to me, personally; Mr. Crozier says, "I know that man, and he don't own more than half an acre of land in the town; and not only that, but he has been bitterly opposed to the bonding of the town; I cannot see how there is any reason in appointing such a man as that;" the judge walked along to the chair that he occupied, and laid the petition down on the table; the petition, as it proved, of those men; and made some remark to Mr. Crozier that he himself was not personally acquainted with the man, or something to that effect; I took the opportunity of picking up the paper and reading it; and from seeing the petition to bond the town, canvassing the list of tax payers of the town, and knowing on which side they were, every one of them, I looked it over and detected at once this state of facts, and I said to the judge, perhaps rather earnestly, too, "this

man isn't a railroad man;" they had, to all appearances, circulated this petition in favor of some other man, and then drawn a pen through his name, and written this man's name above it. I says, "this man and the man whose name is erased, are neither of them railroad men, and there is not the signature of a railroad man on that paper," and I brought my hand down on the paper rather emphatically; there was not a railroad man on the paper; if they represented any such thing as that to him it was a fraud; and after a little talk like that, we bid the judge good day, and went home; that is all the circumstances I know.

Q. Now state what took place the day you went up there; the day the decision was filed? A. Perhaps as a prelude to that, and to give a full understanding of what took place, I ought to say that some two weeks, or perhaps ten days before that, I happened to meet Judge Prindle at the Eagle Hotel, and said to him "Aren't you going to give us a decision before long, in our town bonding case? we would rather like to have it;" the judge says, "There has been such a controversy over this, that I do not wish to decide this until I have finished writing an opinion in regard to it, that I am writing, and I would like to put my opinion on record at the same time that I give a decision in the case;" I says, "How soon can you do that?" he says, "I don't really see how I can get through with it much before Christmas;" I asked him if he thought he would be able to get through with it at that time; he said he guessed he would, or something of that sort; so I went home and told Mr. Crozier about it; after thinking the matter over, we made up our minds that we would take a number of Smithville men with us — against any of whom no objection could be made to their appointment as commissioners — and go to Norwich the day before Christmas (the 24th) and try to urge him up and get the thing done, if possible; that probably he would have it done by that time; we came there on the morning of the 24th and went over to the judge's office; I think he had not come up to his office yet; it was somewhere between seven and eight o'clock; Mr. Crozier and myself went back to the hotel, and a little while after that went over to the judge's office again; we found him in; told the judge that we had come up and would like to get his decision in the matter; he says to us, "I have decided to bond your town, and appoint the commissioners for it; I have not got my opinion quite done, but will finish it up before long, and I will go over now and notify Mr. Follett that I have decided to bond the town;" I says, "I suppose we will have to wait until after this thing is done, for you to

appoint the commissioners;" he said we would; I came down stairs with him, and he turned up the street to go to Mr. Follett's office, while I crossed the street going over to the hotel; I saw nothing more of the judge until perhaps an hour or a little more after that; I don't recollect just the time; then went to his office and he told me that he had notified Mr. Follett and had filed his decision with the county clerk; "Well," I says, "you are ready to appoint our commissioners, then, are you not?" "Well, yes," he said, he supposed he might as well do it then as any time; he says, "I will go down and get the decision, and draw the appointment of commissioners from that," and started out and went down to the county clerk's office; that is as near as I can recollect the course it took.

Q. Did Judge Prindle know any thing whatever, or have any intimation from you of your own proceedings, the getting in readiness of these bonds? A. I don't think he had any means of knowing it; I know that he had none, and I do not believe that he knew any thing of it until this day.

Q. You say you were a director also in the Greene Railroad Company? A. I was not a director; I was treasurer.

Q. Do you remember the time that you, Mr. Birdsell and others went before the county judge to prepare for the publication under this new law of 1869? A. We went there to file the petition of the tax payers to bond the town of Greene.

Q. Do you recollect what occurred there? A. Yes, sir; perfectly.

Q. Now, did you go to my office or anywhere to employ me? A. No, sir.

Q. Was there any suggestion on the part of the county judge that I should be employed? A. None whatever.

Q. Can you state how it was? A. Mr. Birdsell, Mr. Welch, Mr. Race and myself came that morning to Norwich with the petition of the tax payers of the town of Greene to bond that town; we went to Judge Prindle's office to file that petition; told him what we had come for; it was the first case that he had seen under that law; he looked up the statute and read it; then went to draw a notice for publication, setting forth the day that the petition was to be proved and so on; and while he was engaged in that and in reading the law; this, by the way, took considerable time; perhaps three-quarters of an hour or an hour elapsed, and you (Mr. E. H. Prindle) came into the office; he asked you some questions in regard to it, which you answered; some little discussion or querying arose as to

the meaning of some parts of the statute; I was sitting then perhaps some three or four feet from Mr. Birdsell; he was the president of the road and I was the treasurer; I says to him, "Mr. Birdsell, there is, perhaps, going to be a good deal of work about this thing; if there is opposition, we will have to have a lawyer; I don't see why we shouldn't have one now, and have the thing right, and have him give his attention to it;" he says, "I don't know but we should, too, if you say so;" he turned at once to Mr. Elizur Prindle and says, "I wish you would attend to this matter and give your attention to it."

Q. I came into the office without any one going after me? A. Yes, sir.

Q. Happened in there, as you say? A. Yes, sir.

Cross-examination by Mr. STANTON:

Q. Mr. Hays, when was it that you first got those bonds printed, or rather went to New York to get them printed? A. It was decidedly hot weather; I think it must have been in July.

Q. About what was the expense incurred in the proceeding — getting the bonds printed and lithographed? A. In the neighborhood of $100.

Q. How many were there that you got printed altogether? A. A few over two hundred, I think; we used the same form as the town of Greene bonds; had them printed in only one color, and cut out a few words, so that it made it a very cheap matter; the getting up of the bonds.

Q. Your object in getting those printed at that time was that when the decision was rendered you could have those bonds put into the hands of the contractor who had contracted to build your road; so that would be bonding the town whether the proceedings for bonding were legal or illegal, wasn't it? A. It was to have them used and make sure of the road beyond a contingency, and to avoid any delay by injunctions, or any thing of the sort.

Q. How many interviews did you have with Judge Prindle in reference to this matter after the time that the hearing was had until the time of the rendering of this decision? A. I don't recollect of any other interviews save what I have narrated.

Q. Those two? A. Yes, sir; I met him at other times.

Q. You talked with him a great deal in reference to this matter? A. No, sir; I didn't.

Q. Have you given the substance of the conversations that you had with him as fully as you can recollect them? A. Yes, sir.

Q. Did you, sir, in either of these conversations, or at any time from the time this hearing was had, up to the time of the decision, offer to pay Judge Prindle any thing for the order appointing the men that you wanted as commissioners? A. No, sir; I didn't, and never thought of doing so.

Q. Didn't you tell him that you would make it all right if he would do it, or any thing to that effect? A. No, sir, I never did or thought of doing such a thing.

Q. You say, at the first conversation that you had with him, if I understand you right, you found him at the hotel; is that the first conversation when you and Crozier met with him? A. It was at his office; we went over and called upon him, I think I stated.

Q. You say that he said that a man by the name of Benedict or Briggs was the man they wanted for commissioner? A. I think that was the fact.

Q. What other names were mentioned for the position of commissioner, for the town of Smithville, besides these men? A. I don't know that any other names were mentioned in particular; the remark was made that any man who signed the petition for bonding the town would be a good man, and would not be objectionable.

Q. Were there any other names mentioned in that interview between you and Judge Prindle as being proper men to appoint as commissioners? A. I don't recollect of it.

Q. Can you swear there was not? A. To the best of my recollection, I can.

Q. Didn't you state who you thought would be a good man or fair man? A. I don't know that I did.

Q. Do you remember that Mr. Crozier stated who would be a good man? A. I don't think he did.

Q. Can you swear you didn't? A. To the best of my knowledge I can say I didn't.

Q. In the second conversation you had with him, you met him at the hotel? A. It was either at the hotel or on the walk.

Q. Where were you going at the time? A. I don't recollect.

Q. You don't recollect what business you were on, away from the town of Smithville? A. No, sir, I don't; I was on my own business.

Q. Didn't you go up there to see Judge Prindle? A. No, sir.

Q. He told you that he had decided it but hadn't fully written his opinion, and that he would have it written about Christmas? A. I didn't state it so, sir.

Q. How did you state it, sir? A. He said that he didn't want to give a decision until he had written out his opinion and placed that on record at the same time he gave his decision in the matter; that there had been so much controversy over it, that he wanted his opinion on record with the decision.

Q. Did he tell you he had made up his mind at the time? A. No, sir, he didn't.

Q. How many men went up with you on the morning of the 25th day of December, from Smithville? A. Two or three loads I think; I went up the day before, on the afternoon of the 24th; I think I went a little in advance of them; I think I went up the day before; my wife went with me, and I drove my own conveyance to Norwich.

Q. Can you give the names of the men who went up with you? A. There were these three commissioners; these three men who were appointed commissioners, Mr. Tarbell, Mr. Rhodes, Mr. Hazzard, Mr. Read, Mr. Crozier, Mr. Bailey and myself were there if I recollect all.

Q. When was the petition filed for the appointment of these three men who were appointed commissioners? A. There was no petition filed; never was any made.

Q. Now, sir, you did not state any conversation that you had with the judge in reference to the appointment of these three men as commissioners; didn't you have a conversation of that kind? A. At the last interview which I stated, following this thing right along as far as I had stated it, he says: "What men over there do you want as commissioners?" or, "who was a good man there to appoint as commissioner," or something of that sort, and I think Mr. Crozier or myself made the remark that "we have brought over a lot of men for you to choose from, from Smithville; they are all of them qualified under the law to be commissioners of the town," and we named over these men.

Q. Named over these three men? A. No, sir; named over all who came up.

By Senator BENEDICT:

Q. When was this? A. Just subsequent to the conversation that I detailed.

Q. What day? A. The 24th of December, the day of the bonding; this should be following right along with the history of that morning, as I gave it on the direct examination.

By Mr. STANTON:

Q. Who selected these three men? A. The judge selected them; he selected them in the course of the conversation with us.

Q. Was any thing said in that conversation as to your having the bonds already drawn up? A. No, sir; not a word.

Q. How did he come to select this man, Mr. Rhodes? A. I named him among the others.

Q. He happened to choose him? A. He was named as an old citizen, and a good business man of strict integrity, and that he would make a good commissioner; perhaps we recommended him more highly than the rest.

Q. Can you state the language used on that occasion? A. I have; I stated that I wanted him as one of the commissioners.

Q. State what you said? A. It would be a mere repetition of what I stated; good business man; old citizen of the town; a man whom everybody would have confidence in as a commissioner, and proposed him as one of the men who would be as good a man as could be got.

Q. Who took those bonds up to the town of Norwich? A. I don't know that I know who took them; I suppose Mr. Rhodes did.

Q. You didn't take them? A. No, sir; I didn't have them.

Q. Where did you first see those bonds, on the day of the 24th of December? A. At the Eagle hotel.

Q. What part of the Eagle hotel? A. Room thirty-three.

Q. Who was there then with them? A. Mr. Rhodes was in possession of them.

Q. What hour in the day of the 24th was that? A. I should judge a little after or about noon; between 11 and 2 o'clock.

Q. Do you know how long they remained there in the hotel? A. Only during that afternoon.

Q. They did remain there during that afternoon? A. No, I didn't say that; they were taken as fast as they were signed to the county clerk's office to be sealed, and the county clerk's signature put upon them.

Q. You said that the judge said he would make this appointment of commissioners; I understood you to say so on your direct examination, you asked him if he could appoint them then, and he said he would; what hour of the day was that? A. Nine or ten o'clock I should think.

Q. About ten o'clock in the morning? A. Along in the middle of the forenoon.

Q. That was before you had seen the bonds over at the hotel? A. Yes, sir; before I had seen them.

Q. You say he went down stairs into the clerk's office, to get the judgment he had rendered? A. To get the decision.

Q. Who brought it up stairs; did he? A. I don't know; I didn't stay there; I went over to the hotel.

Q. You didn't see him with the appointments of commissioners? A. I don't think I did; I have no recollection of it.

Q. You say it was about nine or ten o'clock in the morning that he said he would go down and get this paper and appoint the commissioners? A. That is what I said.

Q. At what hour did you first go to the surrogate's office that morning? A. Seven or eight o'clock; along after breakfast; as soon as I thought he would be in his office.

Q. About how long after he said he would go down and get this paper was it that you left the office? A. I think I either went down just as he went down to get it, or went out while he was down getting it.

Q. Did you go to the surrogate's office more than once that morning? A. I went twice any way; I might have gone more than that; I went once when I didn't find him in, and once when I did find him in.

Q. Did you go more than once when you found him in the office? A. I don't recollect; I might have gone out and went back in again, if I recollect; I won't say that I did or didn't.

Q. Did you see Judge Prindle go back up into his office after he went down to get this judgment that you say he had filed? A. I don't recollect seeing him.

Q. Now, sir, what time in the day was it that you say he went out, and you went out, he stating that he was going to notify Mr. Follett? A. Well, it was when I first found him in his office; it was the very commencement of the thing that morning.

Q. Do you say, now, that he went out twice, and you went out twice? A. I say just what I said all the way through, which is the history of the transaction.

Q. What do you say now; do you say that you and he both together went out of the office twice that morning? A. I say we both went out together when I found him the first time in the office; he came along with me as far as the corner where Mr. Conway is, and I went over to the hotel, and I think I went there just about the time he did, or while he was out, as he said, to get this paper in the clerk's office; I think I went out of his office again then.

Q. You say you never had had a word with Judge Prindle about the printing of these bonds? A. Yes, sir.

Q. You didn't state to him that you had these bonds on hand already printed? A. No, sir.

Q. There was no reference to that in the conversation you had with him in regard to Mr. Rhodes being a proper man to appoint? A. Not the slightest.

Q. You are positive of that? A. I am very positive, sir.

Q. You say that no suggestion was made by Judge Prindle, at the time you and Mr. Birdsell went there with the petition for the bonding of the town of Greene — that no suggestion was made by him that Elizur Birdsell had had a good deal of experience in those matters, and would be a good man to employ? A. I heard no such suggestion.

Q. Do you mean to swear positively there was no such suggestion made to Birdsell? A. I do.

Q. You know there was none? A. I think there was none made while I was in the office.

Q. Do you know that you heard every word of the conversation that occurred between Judge Prindle and Mr. Birdsell? A. I don't see how any of it could have escaped me.

Q. Do you know that you heard every word of the conversation? A. I know it as well as I know I hear every word that you say, sir; just as well.

Q. Did you desire any other knowledge as to the time when that decision would be filed in the Smithville case than that you received from Judge Prindle in your conversation that you stated? A. No, sir; none whatever.

Q. It was upon this notice that the judge gave you that you and your party again went up to the town of Norwich on the 24th? A. Yes, sir.

By Senator Benedict:

Q. How many of those bonds did you say you had? A. Something over 200.

Q. Can you tell any thing about how many? A. I think it was 205 or 210; I think the amount of bonds in cash was $83,000; I think it was 205 or 210.

Q. Have you any reason to believe that Judge Prindle, on this morning of the 24th of December, before he named those commissioners that morning or that afternoon, had any idea that Mr. Rhodes had signed those coupons? A. I don't believe he had the

slightest idea of it; I don't see how it is possible for him to have.

Q. Did you know they were signed? A. Yes, sir; I requested him to sign them.

Q. Do you know they were signed? A. I asked him if he had signed them, and he said he had.

Q. When was that? A. A day or two before the 24th of December.

Q. How long did you say they were given to him to sign before that? A. It was quite a while before that; I will not pretend to state just the time.

Q. Some weeks? A. Yes, sir.

Q. Some months? A. Yes, sir; I had the bonds and I gave them to him just as it happened to come convenient.

JAMES HAZZARD, called for the respondent, being duly sworn, testified as follows:

By Mr. E. H. PRINDLE:

Q. Where do you reside, Mr. Hazzard? A. Smithville.

Q. Are you one of the commissioners, or one appointed? A. I am.

Q. You went to Norwich on the 24th day of December? A. The 23d of December I went.

Q. You was there on the 24th? A. Yes, sir.

Q. You were appointed a commissioner? A. Yes, sir.

Q. State how you came to go? A. Mr. Crozier, I think, spoke to me on the morning of the 23d, and said he was going up to Norwich and he would like to have me go along, and I went with him; seven or eight of us went up; he said he was going up to see if he could get the decision of the bonding of the town; he wanted to know whether it was going to be bonded or not; that is the way I came to go.

Q. Had you any knowledge that you was to be appointed a commissioner? A. No, sir.

Q. Or any intimation of the kind? A. No, sir.

Q. Had you applied to be appointed a commissioner? A. No, sir.

Q. Or anybody for you? A. No, sir; not to my knowledge.

Q. When did you sign the bonds? A. On the 24th.

Q. Whereabouts? A. At the Eagle hotel, in Norwich.

Q. At what time of the day? A. Between 12 and 5 o'clock.

Q. Did the other commissioner sign them at the same time? A. Yes, sir.

Q. At the same place? A. Yes, sir.

Q. After the decision was filed? A. Yes, sir.

Q. You knew what the decision was then? A. Yes, sir.

Q. Did you have any knowledge of what the decision would be before that day? A. No, sir.

Q. Did the judge know any thing in relation to what you had done, previous to that day, in regard to those bonds? A. Not to my knowledge, he didn't.

Q. Or any thing about the coupons being signed in advance? A. Not to my knowledge.

Cross-examined by Mr. STANTON:

Q. Mr. Hazzard, you went up to the town of Norwich, at that time, at the request of Mr. Crozier? A. He asked me to go up.

Q. When did you hear that the town of Smithville was to be bonded? A. I think betwixt 10 and 11 on the 24th.

Q. Who did you go up with? A. I rode in a cutter with Mr. Rhodes.

Q. Did you take up the bonds? A. I did not.

Q. Did Mr. Rhodes? A. I cannot tell that.

Q. You don't know who did? A. No, sir.

Q. When did you first see the bonds that day? A. I should think shortly after 12 o'clock.

Q. Where? A. In the Eagle hotel.

Q. Did you sign the bonds at that time? A. Yes, sir.

Q. At the time you first saw them, you went to sign the bonds? A. Yes, sir.

Q. Who was with you at that time? A. Mr. Rhodes, Mr. Bailey and Mr. Tarbell were in the room where I first saw the bonds, I think; there may have been others, but I am not positive.

Q. Did you go to the office of the county judge that morning? A. I went up some time before dinner.

Q. Who went with you? A. I think that Mr. Tarbell and Mr. Rhodes went with me.

Q. Was there any talk at that time about the commissioners, as to who should be appointed? A. I understood at that time that we were appointed first commissioners; I understood it in some way, I don't know how.

Q. Where were you when you learned that fact? A. I cannot say whether it was in the hotel or about there; I was in and out.

Q. Then you went over to the surrogate's office? A. Yes, sir.

Q. Do you recollect who told you? A. No, sir.

Q. You went over to sign the bonds after you heard you were appointed commissioner? A. Yes, sir.

Q. How many did you sign that day? A. I think 205.

Q. How long were you about it? A. As I said before, I cannot tell you exactly, but somewhere from three to five hours; I didn't pay much attention to the time, because I didn't think any thing about it at the time; I know it was nearly night when I came there.

Q. As fast as you signed them they were sent to the clerk's office for registration, were they? A. I cannot say, sir; they were taken out of the room.

Q. Did you hear any portion of the conversation between Judge Prindle and the officers of this company, as to whom should be appointed commissioner on that day? A. No, sir.

Q. You knew nothing of the transaction until you were notified that you were appointed? A. That is the first I heard of it.

Q. You are positive that was before dinner? A. I think it was a little before dinner.

By Senator BENEDICT:

Q. What is your dinner hour out there? A. Half-past twelve.

By Mr. STANTON:

Q. What was the dinner hour that day? A. Half-past twelve; you undoubtedly know that is the dinner hour in Norwich.

By Mr. E. H. PRINDLE:

Q. Has that road been built? A. Yes, sir.

Q. In operation now? A. Yes, sir.

Q. What is the length of it? A. Nine miles.

LEWIS S. HAYES recalled.

By Mr. STANTON:

Q. You were indicted for conspiracy, wasn't you, with one Hurley, to destroy the maps of the Greene Railroad Company? A. No, sir.

Q. You had a civil action brought against you and judgment recovered against you of $1,000, didn't you? A. Myself and Mr. Crozier and some others.

Q. For destroying the maps of the railroad company? A. Yes, sir.

CHARLES P. TARBELL called for the respondent, and being duly sworn, testified as follows:

By Mr. E. H. PRINDLE:

Q. Where do you reside, Mr. Tarbell? A. Town of Smithville, Chenango county.

Q. Were you one of the commissioners? A. I was.

Q. Did you go to Norwich on the 24th of December? A. I was there on the 23d of December.

Q. State how you came to go? A. I went up at the suggestion of Mr. Jesse Read; he came and asked me to ride up to Norwich; he said there was a prospect of getting a decision for bonding the town of Smithville, and he wanted to go up, hearing the commissioners would be appointed; accordingly, I went up with Mr. Read; I rode in his team.

Q. Did you sign the bonds? A. Yes, sir.

Q. When and where? A. On the 24th, in the afternoon; directly after dinner, in the Eagle hotel.

Q. Did Judge Prindle know any thing about the bonds having been issued beforehand, or the coupons signed? A. Not that I know of.

Q. Did you have any knowledge beforehand how the decision would be made, or that you were to be appointed commissioner? A. No, sir.

Q. Or any intimation of that kind? A. No, sir.

Q. You signed the bonds that day? A. Yes, sir; I commenced directly after dinner.

Q. You have always lived at Smithville? A. Yes, sir.

Q. An old resident there? A. Yes, sir.

Q. Do you recollect of being in Greene, at a public meeting, last fall, during the campaign, that Mr. Follett addressed? A. Yes, sir.

Q. Did you hear him make a statement that the names of the commissioners had been lithographed in the bonds beforehand? A. Yes, sir; after being called out several times by him and the crowd, I told him that it was a mistake, and that they were not lithographed.

Cross-examination by Mr. STANTON:

Q. Where did you first see the bonds that day? A. In the Eagle hotel.

Q. You didn't take them to Norwich? A. No, sir.

Q. You don't know who did? A. I think I saw Mr. Rhodes, and he took them out of his valise; I told him to take them up; saw them taken out of the valise at all events.

Q. What time of the day did you first know you were to be commissioner? A. Some time about 11 o'clock, perhaps.

Q. Had there been any talk before you went up there between the officers of the company and yourself, that you would be appointed commissioner? A. No, sir.

Q. You say it was about 11 o'clock that you heard you were to be commissioner; who told you at that time? A. Mr. Read told me between eleven and twelve; it might have been nearer twelve than eleven, perhaps.

Q. Were you at the office of the county judge that morning? A. No, sir.

Q. Didn't go there at all? A. I went to the county clerk's office.

Q. What time did you go there? A. Directly after eleven or twelve; I went there directly after I heard I was appointed; went over from the hotel.

Q. Who did you see there in the clerk's office? A. Mr. Thompson and his clerk, I believe.

Q. Anybody else? A. Rhodes and Hazzard went in with me.

Q. Did you take the bonds in at that time? A. No, sir.

Q. You started for Norwich at the suggestion of Mr. Read? A. Yes, sir.

Q. Was Mr. Read one of the directors of this road? A. Yes, sir.

ANDREW BAILEY, a witness on behalf of the respondent, being duly sworn, testified as follows:

Senator BENEDICT — Mr. President, I move that when the Senate take a recess at seven o'clock, it be until eight o'clock this evening.

The question was put on Senator Benedict's motion and was declared carried.

By Mr. E. H. PRINDLE:

Q. Where do you reside? A. Smithville, Chenango county.

Q. Are you one of the directors of this railroad company? A. Yes, sir.

Q. Did you go to Norwich on the 24th of December? A. Yes, sir, on the day spoken of; I don't remember the date myself.

Q. How did you happen to go? A. I don't really know myself;

I don't know what suggestion I went on; I know I went with the rest of them.

Q. Don't remember the particulars? A. No, sir.

Q. Went upon railroad matters? A. Yes, sir.

Q. Did you know at that time, in advance of the decision, what the decision of the county judge would be, or was to be? A. No, sir.

Q. Or who was to be appointed commissioner? A. No, sir.

Q. Or have any intimation? A. No, sir.

Q. Did the county judge, so far as you know, know any thing about the bonds having been prepared beforehand or coupons signed by anybody? A. Not to my knowledge.

Cross-examination by Mr. STANTON:

Q. Were you in the judge's office in the morning when the talk was had about the appointment of the commissioners? A. No, sir.

CHAS. J. BOWDISH, a witness on behalf of the respondent, being duly sworn, testified as follows:

By Mr. E. H. PRINDLE:

Q. Where do you reside? A. Glen Cove, Long Island.

Q. What is your profession? A. Clergyman.

Q. Where did you reside in 1870, in the fall? A. In Collinsville, Connecticut.

Q. What relation were you to the Rev. Leonard Bowdish, deceased? A. Nephew.

Q. State whether there were other nephews beside yourself, and how many? A. Four others.

Q. All of the same profession as yourself? A. Yes, sir.

Q. Can you state where they resided then? A. A. C. Bowdish, Marathon, New York, W. W. Bowdish, Bridgeport, Connecticut; E. S. Bowdish in Steele county, Minnesota; I don't remember the town now; and W. M. Bowdish in Winona county, Minnesota.

Q. Leonard Bowdish had no children? A. No, sir.

Q. Were there nieces also? A. Yes, sir.

Q. Where did they reside? A. One in Bainbridge, New York, and the other in Anoca, Minnesota.

Senator WEISMANN — What charge is this?

Mr. E. H. PRINDLE — The fifty-second charge.

Q. Nancy Bowdish was the widow of the Rev. Leonard Bowdish? A. Yes, sir.

Q. State what you had to do in regard to that estate after the decease of your uncle; go on and give a statement of the facts? A. I was informed by the witnesses of the will, at the time the will was witnessed, that I was the executor of the will; and, after the funeral, I asked to see the will, believing that I was the executor, and permission was not granted to me to see the will.

Q. Of whom did you ask permission? A. Of the widow, who had possession of the will; I, thinking that I had a right to see it, said to her that if she would give me a copy of the will, as I must return to my home in Connecticut immediately, that I would give her her own time to go forward and prove the will, and she stated to me that I was not an executor of the will; that I had nothing to do with the estate; that it was none of my business; that she should take her own time, and perhaps would go to Ohio before the will was proven. Statements had been made to other members of my family that led me to think, in order to secure the estate to the legatees, it was necessary for me to take counsel and prompt action in the matter, and I went that afternoon to Norwich and engaged the services of an attorney, put it into his hands and he took charge of the matter.

Q. What attorney was it? A. Geo. W. Ray.

Q. State what was done, so far as you know? A. He made out the papers and then went himself and saw these parties.

Q. Can you state what papers they were? A. The commencement of the action for the proof of the will; I made the affidavit for the commencement of the proof of the will in behalf of the legatees, and I put the matter in his hands as my attorney, and then immediately left for my home in Connecticut, and didn't see him again, and we had communication by mail up to the time that the will was proven, when I again returned to Norwich to the proof of the will.

Q. Were citations issued to the various legatees and heirs? A. Yes, sir.

Q. Did you know any thing about how they were served? A. They were served —

Q. Or by whom they were served? A. By mail, I think.

Q. No — who did the business? A. Geo. W. Ray.

Mr. PECKHAM — Don't answer unless you know individually.

By Mr. E. H. PRINDLE:

Q. You left it with him to do? A. I directed him to do it, and

he made out the papers, serving the notices on all these parties that afternoon while I was in the office; before I left.

Q. Then you left him to serve them, or procure the service? A. Yes, sir.

Q. What was done on your return, and on the return of the citations? A. I will refer to my diary of July 14th; I returned to Norwich, and on July 15th, I met Mr. Ray in his office, and held some consultations with him in reference to the proof of the will; I saw the will for the first time on the 14th, and on the 15th Judge Prindle was sick; not able to be at his office, and I had a conversation with the attorney, Mr. Ray, and he, with the widow and the witnesses, went to the residence, I believe, of Judge Prindle; he so informed me, and the will was proven there.

Q. What further steps were taken? A. By whom.

Q. By you or by Mr. Ray; any thing in relation to bail, or any thing of that kind; whether a petition was made; application was made to the surrogate requiring her to give bail? A. I did make application that there should be sufficient bail given, to secure the estate to the legatees.

Q. You were a non-resident? A. I was in Connecticut at the time.

Q. Had you heard that she claimed, that by the laws of Ohio, she could hold all the property there, or any thing to that effect? A. She told my sister that.

Q. You apprehended that she might go to Ohio? A. She intimated as much as that to me in the conversation that afternoon when I requested to see the will; and her intimating that she might have to go to Ohio before the will was proven, connected with the statement she had made to my sister in reference to the laws of Ohio, led me at once to see that it was necessary for me, as the representative of the legatees, to take steps at once to secure the estate.

Q. Mr. Ray did whatever business was done there for you? A. Yes, sir.

Q. The widow did finally give the bail? A. Yes, sir.

Q. How much did Mr. Ray pay you for your expenses? A. For the two trips, from Connecticut to Norwich and back, was $50.

Q. Mr. Ray said the whole bill was $225; that included your bill? A. Yes, sir.

Q. Were the heirs all satisfied with that? A. They were.

Q. This property all went to the heirs; all went to the legatees mentioned, after Mrs. Bodwish had her life interest in it? A. She

has the interest on it during her life-time, and then it went to the heirs.

Q. They were all satisfied with the charges of Mr. Ray for what he did? A. After the bonds were fixed and it was secured and all, I wrote a letter to Mr. Ray stating that, as the representative of the legatees, I could assure him that we were perfectly satisfied with the manner in which he had done our business, and the promptness with which it had been carried out, and desired, on behalf of the legatees, that he should be liberally rewarded for his services.

Cross-examination by Mr. STANTON:

Q. How soon after the funeral services was it that you had the conversation with Mrs. Bowdish that you speak of? A. That was the same day.

Q. How soon after? A. Probably in the course of four hours.

Q. Can you give it more definitely than that; where was the funeral held? A. At the house of her brothers in Earlville.

Q. Where did this conversation occur? A. At that house.

Q. How far from the house was the corpse buried? A. I don't know; perhaps quite a distance; perhaps two miles.

Q. It was shortly after your return from the cemetery? A. Within perhaps two or three hours.

Q. Where did you go for counsel first? A. We went to Norwich.

Q. Who did you see? A. I saw Mr. Ray.

Q. At what office did you see him? A. In his office.

Q. Where was his office? A. It was in the second story of a building opposite the Eagle Hotel; I don't know the number of the street nor the number of the building.

Q. Did you go down intending to find Mr. Ray? A. I went down intending to find a lawyer and engage counsel.

Q. Who first suggested the name of Mr. Ray to you? A. My brother-in-law.

Q. Had he been acquainted with him? A. He said he knew him.

Q. There was no suggestion of going to Judge Prindle in the matter? A. To me?

Q. Yes, sir? A. No, sir.

Q. Do you know whether the office where you found Mr. Ray was the surrogate's office? A. I supposed it was.

Q. Was it the same office where you went to do the business to prove the will? A. Yes, sir.

Q. Over the county clerk's office? A. I believe it was.

Q. You were paid $50 by Mr. Ray, you say? A. Yes, sir.

Q. Did you ever pay Mr. Ray any thing for his services? A. His services were taken from the estate.

Q. You never paid him any thing on your own part? A. No, sir.

Q. He paid you $50 for what? A. Expenses.

Q. When and where? A. From Collinsville to Norwich and return twice.

Q. The first time you came up to the funeral? A. Yes, sir.

Q. It was your expenses coming up attending the funeral that was intended to be covered? A. When I got there and found that I was named as the executor of the will, I went forward with that business, and he said that my expenses there would be paid.

Q. How long were you up at Earlville at the time of the funeral? A. Do you mean how long I was in New York; in the State.

Q. I mean how long you were at Earlville, where the funeral was held? A. I was there one day.

Q. How many days were you in Norwich; more than one? A. No, sir.

Q. Did you go directly home from there? A. I went to Bainbridge and then home.

Q. Do you mean that you spent two days at Norwich and Earlville together, or was it the same day that you were at both places? A. Two days; I was at Earlville May 25th, and in Norwich May 26th.

Q. How far is it from Collinsville to Norwich? A. I don't know.

Q. What part of the State of Connecticut is Collinsville? A. Near the city of Hartford.

Q. Do you know what the fare is from Collinsville to Norwich? A. No.

Q. About what amount? A. I kept an item of my expenses; the first time I went —

Q. Answer the question about the fare. A. I kept an item of my expenses, railroad fare and hotel fare, and the first time it amounted to between $26 and $27.

Q. Will you answer my question; about how much is the fare from Collinsville to Norwich? A. I cannot.

Q. How long did it take to go; more than a day? A. It took me a day and a half.

Q. When was this $50 paid to you? A. It was in April, I believe, of '71.

Q. Was that at the time of the proof of the will? A. No, sir; it was after the settlement of the estate.

Q. Were you at Norwich at that time? A. No, sir.

Q. Did you go directly when you came from Collinsville to Earlville? A. The first time do you mean?

Q. Yes, sir; when you first came to the funeral, did you go directly from Collinsville to Earlville? A. I went directly to Bainbridge; I was telegraphed to, that the uncle died there, and we expected to find him there at Bainbridge.

Q. Went directly from Bainbridge to Earlville? A. Yes, sir; went from New York by the New York and Erie railroad to Binghamton.

Q. What time was this will proved; was it July? A. I have the date here, July 15th.

Q. Of what year? A. Of '70.

Q. Was it the April following when this sum of $50 was paid you by Ray? A. I believe it was.

Q. Where was that paid you, in Norwich? A. It was sent to me by mail.

Q. Did you have any interview with Judge Prindle in reference to that $50? A. No.

Q. In reference to the payment of your expenses? A. No.

Q. You never had any talk with him about that matter? A. No.

Q. Did you ever make any affidavit of the amount of your expenses? A. I didn't; I handed him my bill; it was so much.

Q. When did you hand that bill in? A. At the time of my second visit to Norwich.

Q. Who did you hand it to? A. Ray.

Q. Who did you make the bill out against? A. I handed the amount of my expenses to him; to Ray.

Q. You made out no formal bill? A. No, sir.

Q. The heirs, you say, were all satisfied with this; did you communicate with all the parties interested in the estate in reference to it? A. My brothers and sisters; I did.

Q. Did you tell them how much was taken in expenses? A. It wasn't stated; they said whatever arrangements I made with reference to it, they would be satisfied with.

Q. They never knew any thing about how much was taken in the way of expenses? A. Not to my knowledge.

Q. When did you know of the amount that was taken for expenses in this matter? A. I cannot tell that.

Q. Do you know to-day; in the way of expenses? A. Yes, sir.

Q. When did you first learn the amount? A. Ray told me the amount of the charges some time in the latter part of April, 1871, I think.

Q. Did Ray go to Collinsville to see you at any time? A. He did.

Q. Did you see him there? A. I did.

Q. When was that?

It being nearly 7 o'clock Senator PALMER said: Mr. President, I move that the time be extended, as this witness wanted to go away on the boat at 8 o'clock.

The PRESIDENT — I will allow the witness to proceed until the counsel gets through with the witness.

The WITNESS — I will say to the counsel and the Senate that my wife is quite ill, and it is quite necessary I should get back to-night.

Q. When did Ray go to see you at Collinsville? A. I am not able to tell; I didn't make a memorandum of it in my diary; I am not able to tell the month, but it was in '71, in the early part of the year.

Q. Did he go on your application? A. No.

Q. How did he come to go there? A. He was my attorney, and he said he thought it was for the interests of the estate that I should know how things were going, and came there to consult with me.

Q. You never had sent for him? A. No, sir.

Q. Do you know who else Ray visited of the legatees of this will at that time on that trip? A. I don't know; I don't know that he visited any one.

Q. Did Mrs. Bowdish, the widow, make any opposition to giving bail? A. I don't know.

Q. There was no contest over that question that you were aware of? A. No, sir.

Q. Did you ever talk with her about the payment of this money; the expenses of this proceeding? A. No, sir.

Q. You don't know whether she is satisfied or not? A. I don't from personal knowledge.

Q. You knew she was interested in the estate largely? A. Yes, sir.

By Senator BENEDICT:

Q. Did you turn out to be executor of the will? A. Conditionally.

Senator TIEMANN:

Q. After her death or her incapacity? A. Her incapacity; when I first saw it; the facts are like these, that the witness, one of the witnesses and my brother and brother-in-law, who are present, saw my name in the will as executor, and they so informed me, and at the time of my making my affidavit in behalf of the legatees, I supposed that I was the executor associated with her; when I came to see the will I found that it was conditional; in case of her being incapacitated, or at her death.

The Senate took a recess to 8 P. M. of this day (July 10th).

July 10, 1872.

Senate re-assembled at 8 o'clock, P. M.

FREDERICK MERRILL, a witness called on behalf of the respondent, having being duly sworn, testified as follows:

Examined by Mr. E. H. PRINDLE:

Q. Do you know Hiram R. Humphrey, or do you remember him? A. No, sir; I can't say that I do; I remember the case.

Q. You remember the particular case? A. Yes, sir.

Q. What were you doing, and where did you reside in 1869, on the 14th day of October? A. I was in Mr. Prindle's office at Norwich; I resided there.

Mr. E. H. PRINDLE — I hardly see how you can examine this witness. I want to prove the very day, and the letters of administration were dated on that very day. They are not here; they have gone to the printer.

Q. Do you recollect a man by the name of Humphrey? A. Yes, sir; I recollect the case — the Humphrey case.

Q. Will you state what occurred, and where Judge Prindle and Mr. Ray were that day? A. The gentleman by the name of Humphrey, he came and applied for letters of administration of his brother's estate. I think it was — I won't be positive. Mr. Ray was in Otselic trying a case; Mr. Prindle was at Cortland. He wanted to know if the business could be attended to, and I went over to see you; your office was on Main street then; you was not at home, and I went in the opposite office — Mr. Marvin's; he said that the business could be did, and wanted I should send him over; I told him, and he said, if I could do it just as well, he would just

as lief I would do it; he had his petition and bond already drawn up. I made out letters of administration and filed the order subject to Mr. Prindle's approval. That is all there was of it.

Q. Now state how it was about stamps and money, whatever it was? A. Well, I couldn't say exactly how much the stamps were; I know he paid me $2 more than the stamps amounted to, for my services.

Q. Did you go and buy the stamps? A. No, sir; I did not; I sent out for them.

Q. Who did you send out? A. Webster; Webster was in the office.

Q. What Webster was it? A. Edward Webster.

Q. Do you remember any thing about who he said had drawn the papers? A. Loren Winsor.

Q. You filled out a blank and gave him the letters of administration? A. I did; yes, sir.

Q. And did you record the letters in a book? A. I did.

Q. You did it at his urgent request? A. Yes, sir.

Q. Without any authority from the surrogate? A. The surrogate wasn't there.

Cross-examination by Mr. STANTON:

Q. How did you come to charge him any thing for your services in the case? A. I don't know, sir.

Q. How long had you been in the office at that time? A. About one year.

Q. You followed the practice of the office in making the charge, I suppose?

Mr. E. H. PRINDLE — I object to that.

By Mr. STANTON:

Q. Can you tell how you came to make the charge? A. I made it; how do you come to make any charges for your work?

Q. How many times have you been arrested for stealing? A. Never, sir.

Q. How many for obtaining property under false pretenses? A. Never, sir.

Q. Never in your life? A. Never in my life, sir, arrested.

Q. How many times have you heard of process being issued for you? A. I have heard it once.

Senator TIEMANN — What has that got to do with it?

Mr. STANTON — Nothing in particular, sir; it may have some effect upon the credibility of the witness.

Q. Now, sir, can you tell for a certainty that Mr. Humphrey never saw Mr. Prindle before he went to Norwich? A. Not on that day, sir, he didn't.

Q. When did Prindle come home from Cortland? A. Well, Ray came home first; I think it was the next day after; I couldn't swear as to the dates; however, I think Ray came home the next day after I issued these letters.

Q. Can you tell just when Mr. Prindle came home from that journey to Cortland? A. I cannot.

Q. You don't know whether he got home the same night that this business was transacted or not, do you? A. Yes, sir.

Q. You have got a distinct recollection of that, have you? A. Well, I didn't see him.

Q. You didn't see him? A. I didn't see him that night nor the next day.

Q. You don't know whether Mr. Humphrey saw him or not? A. I do not.

Re-direct examination by Mr. E. H. PRINDLE:

Q. You know that Mr. Humphrey didn't see him in the office? A. He didn' see him in that office at the time I issued the letters.

Q. You know that Judge Prindle didn't order Mr. Ray to do any business or take any money? A. There wasn't either of them there.

Q. What is your business now? A. I am a clerk in the D. L. and W. railroad office.

By Senator PERRY:

Q. Mr. Merrill, do you recollect how much Mr. Humphrey paid you in all? A. Well, I couldn't say positively; I remember sending out a five dollar bill with this Webster for the stamps, and he brought back some change; I couldn't say exactly how much it was, but I think from three to four dollars the stamps amounted to.

Q. Will you swear that he did not pay you six dollars? A. For the stamps?

Q. In all? A. No, sir; I will not swear it; I say that I charged him two dollars more than the stamps amounted to.

Q. He may have paid you then over six dollars? A. Well, I didn't think it was over six dollars.

Q. He may have paid you six dollars? A. He may have paid me six dollars, but I was thinking it was five dollars and a half; I wouldn't be positive.

EDWARD WEBSTER, a witness called on behalf of the respondent, having been duly sworn, testified as follows:

Examined by Mr. PRINDLE:

Q. Where do you reside? A. In Norwich.

Q. What is your business? A. I have been going to school for three months.

Q. You heard the testimony of the last witness? A. I did, sir.

Q. You remember the circumstance? A. I remember of a man coming in the office at one time when I was there, and wanting some business done, and Mr. Prindle and Mr. Ray had both gone away.

Q. Do you remember what his name was? A. Well, I think it was Mr. Humphrey.

Q. Well, state what was done, as you recollect? A. Well, Mr. Merrill went out to see Mr. Prindle, I think.

Q. To see me? A. Yes, sir; Elizur Prindle; he didn't find him at home, and went to see Mr. Marvin; Mr. Marvin said that he would do the business, or something to that effect; the man told him that he had just as leave pay him for doing it as anybody else, and he went to work and made out the papers; I know that he said that he had made two dollars.

Q. Who went to buy the stamps; do you remember? A. I went after the stamps.

Q. Where did you go to get them? A. To the bank.

Q. And did get them? A. Yes, sir.

Q. Do you remember what amount? A. No, sir; I do not.

Q. Any thing further in regard to the transaction particularly, that you recollect? A. I believe not.

Cross-examination by Mr. STANTON:

Q. When was your attention called to this? A. It was called to it in Utica, the other day.

Q. Had you ever known Mr. Humphrey? A. No, sir.

Q. Do you know him now? A. No, sir; I do not.

Q. Have you any knowledge that this was Mr. Humphrey that you saw in the office that day? A. I have not.

Mr. E. H. PRINDLE—I don't know but we shall be obliged

to detain Mr. Merrill, in order to show him the handwriting; to identify the day positively. [To opposing counsel.] Will you admit that the letters of administration produced here are in his handwriting?

Mr. STANTON—If you say it is the handwriting of Mr. Merrill, on your word, we will admit it. If you will state to me that it is in his handwriting, we will admit it.

Mr. E. H. PRINDLE—There is no question about it.

Mr. STANTON—We will admit it, then.

CHARLES W. SCOTT, a witness called on behalf of the respondent, having been duly sworn, testified as follows:

Examined by Mr. E. H. PRINDLE:

Mr. PRINDLE—This is under the sixth charge.

Q. Where do you reside? A. Town of Cherry Valley, Otsego county.

Q. You formerly resided in Chenango county? A. I formerly resided in Chenango county.

Q. Do you know John Murphy? A. I do.

Q. Did you have conversation with him any time last fall, during the campaign, in relation to his paying money at the surrogate's office? A. I did.

Q. Will you go on and state when and where, and what that conversation was? A. In the first place I met Mr. Humphrey at a meeting at McDonough at which Judge Prindle spoke, and was talking about what Mr. Murphy had sworn to in relation to his father's estate, or the settlement of the estate, and Mr. Murphy commenced saying he had sworn to no such thing; I took out of my pocket a pamphlet entitled the "Mill of Extortion," and commenced reading Murphy's affidavit from the pamphlet; Mr. Murphy kept denying that he had sworn to any such thing, and some one in the crowd suggested that we had got some affidavit that had been garbled or changed; I held up the pamphlet and said, "no, this is one of your own documents, the 'Mill of Extortion;'" and Mr. Murphy said he couldn't help it, he never had sworn to any such thing; the next day, while returning from McDonough with my brother-in-law, we met Mr. Murphy in the road a little east of East Pharsalia; perhaps a quarter of a mile out of the village; he was riding one horse and leading another, going to East Pharsalia, I judged, and stopped and commenced talking about the affidavit; John said he was sorry; he didn't see how they came to publish such an affidavit; he said people would think he had been swearing

to a lie; he said people in the vicinity knew the circumstances; I took out the pamphlet and read the affidavit, section by section, asking John if he had made any such affidavit; he said he had not; I read him the clause in which be swears that on February 5th, 1868, he went before Judge Prindle to have said Edward Murphy's will proved; I asked him if that was not the very day on which his father died; he said it was; he didn't see how they came to make any such affidavit; I read him the clause; "and the said Prindle charged him $75, which he paid and left; said judge then followed him out into the street and told him that his clerk made a mistake and he wanted $5 more, which he paid, supposing it to be surrogate's fees;" he said it was not so; he didn't pay Judge Prindle any $75; he paid Mr. Ray the money.

Q. Do you remember what amount? A. No, sir; I do not; said I, who done the business for you? he said, Mr. Ray; well, said I, is that all the money you paid? said he, that is all except $50 I paid to go to Dr. Dwight for renouncing the executorship; that is substantially the conversation that occurred.

Cross-examination by Mr. STANTON:

Q. Where do you reside now? A. I reside in the town of Cherry Valley, Otsego county.

Q. Where did you reside during the campaign last fall? A. I resided in Otsego county, Cherry Valley; that was my residence; I spent the campaign, or part of it at least, in Chenango county.

Q. Were you down there to work for Judge Prindle during the campaign? A. I was there during the campaign and labored for Judge Prindle.

Q. That was your business, wasn't it? A. It was not, sir; my business was the insurance business, I was there upon that business.

Q. You took a very deep interest in the matter against him? A. I attended to some little things and took some interest in the campaign.

Q. And you had considerable many excited conversations? A. I don't think I had any very excited conversation, except what I had with your honor.

Q. You were very excited, were you not, at the time you speak of having the conversation with Mr. Murphy? A. I think I was not.

Q. You are positive? A. I am positive I was not in the morning when I met him there.

Q. You are positive you read the whole of the affidavit to Mr.

Murphy? A. I am positive I read the whole of the affidavit to Mr. Murphy?

Q. Didn't he say that he paid $5 to Mr. Prindle on the street corner? A. He did not.

Q. Didn't he claim that he paid it? A. He didn't claim to me that he paid it.

Q. Well, did he say whether or not he did pay it? A. He claimed to me that he paid the $75.

Q. The $75 in the office? A. To Mr. Ray.

Q. And he paid Judge Prindle the $50 there? A. He didn't claim that he paid the judge that $50; he claimed that he paid $50 that went to Mr. Dwight for renouncing the executorship.

Q. That went to him? A. Yes.

Q. Did he say that he paid Dr. Dwight $50? A. I asked him if he paid any thing besides the $75.

Q. Well, he didn't say to you that he paid the $50? A. He said he paid $50 to go to Dr. Dwight for renouncing the executorship.

Q. You are positive about the exact language that he used? A. I don't think he said he paid it to Dr. Dwight; I don't think he said who he paid it to.

Q. Have you given the exact language used by Mr. Murphy at that time? A. The substance; not verbatim, perhaps.

Q. How many were present at the time you had this conversation with Murphy at McDonough? A. There were quite a number present at that time, sir.

Q. And you had got into some heated discussion over that matter, too? A. There was some discussion at that time.

Q. He didn't say whether or not he paid the $5 to Judge Prindle upon the street corner; he didn't say any thing about that, did he? A. I don't remember that he said any thing about the $5 in particular.

Q. Now, sir, when he stated to you that there was something wrong in the affidavit, was it not that part of the affidavit which said that he was the executor of his father's will? A. He said that was wrong.

Q. That was the part that he stated was wrong? A. I read it to him, clause by clause, and he denied every clause in the affidavit.

Q. He denied every clause as you read them one after the other, did he? A. As I read them one after the other.

Q. He denied every one of them? A. He denied every clause.

Q. Well, he claimed that the substance of the whole affidavit was

true? A. No, sir; he didn't claim so; he claimed that the substance of it was wrong.

Re-direct examination by Mr. E. H. PRINDLE:

Q. This conversation that you have narrated, was the next morning, when you met him in the road? A. The conversation that I have related here, the last part of the conversation, was when I met him in the road the next morning, a little east of East Pharsalia.

Q. Then was the time you read it clause by clause? A. That was the time I read it clause by clause; I also read it in the same way at McDonough.

Q. Silas W. Berry was present? A. Yes, sir.

SILAS W. BERRY, a witness called on behalf of the respondent, having been duly sworn, testified as follows:

Examined by Mr. E. H. PRINDLE:

Q. Where do you reside? A. Pharsalia, Chenango county.

Q. You heard the evidence of the last witness? A. Yes, sir.

Q. Were you present at that meeting at McDonough? A. I was.

Q. And at the subsequent interview? A. The next morning.

Q. Yes. A. Yes, sir.

Q. Will you go on and state in substance what was said at that interview? A. Well, my brother-in-law met him and he spoke of his affidavit, and then he takes this "Mill of Extortion" from his pocket and read the affidavit to him, and he denied it as he has so sworn.

Q. What was said about the payment of money? A. He asked him who he paid the money to; he asked him in the first place who done this business; he says "George Ray;" says he "who did you pay the money to—George Ray or Judge Prindle;" said he, "I paid it to George Ray."

Q. Did he state how much he paid? A. Seventy-five dollars.

Q. Did he state whether that was all that he paid? A. Yes, sir, with the exception of $50 that he spoke of that was going to Dr. Dwight.

Cross-examination by Mr. STANTON:

Q. You are sure he said he paid no more than $75 and $50? A. Yes, sir.

Q. He claimed he paid both those? A. He claimed that he paid only $75 in the surrogate's office.

Q. Who did he claim that he paid the $50 to? A. I don't

remember as he stated who he paid it to; he said that he paid $50 to Dr. Dwight; I think that was the way he worded it, whether he paid it directly to him or some one else, I couldn't say.

Q. Now, sir, are you sure of the language that he used? A. Sure of the language that he used?

Q. The particular words that he used on that occasion? A. Yes, sir.

Q. You say, then, that he said he paid $50 to Dr. Dwight; you swear to that? A. He paid $50; well, I wouldn't swear positively that he paid it directly to Dr. Dwight.

Q. State what he said, sir; you say that you give the exact language?

Mr. E. H. PRINDLE—No, he did not say "the exact language."

By Mr. STANTON:

Q. State what he said now? A. Well, I couldn't state it, as I know of, exactly as he said in regard to the money that was going to Dr. Dwight; there was $50 that was going to him for renouncing the executorship.

Q. You can't give the language that he used then? A. Not exactly as I know of; I would not swear positive in regard to that.

Q. Didn't he say, sir, that he paid the $50 to Judge Prindle to get Dr. Dwight to renounce? A. No, sir.

Q. You are certain about that? A. Yes, sir.

Q. You were considerably excited at the time? A. Not much excited.

Q. You were deeply interested for Judge Prindle, were you not? A. I voted for him.

Q. And you were active for him, were you not? A. Well, I worked for him, sir.

Q. He left some money with you to use in the election? A. No, sir.

Q. You used some? A. Yes, sir.

Q. You went about at the various meetings and stated the conversation you had had with John Murphy, did you not, and your brother-in-law, Mr. Scott, also went around to the various meetings and stated this conversation that you had had with John Murphy? A. I don't know that I stated it at any meetings; I don't know but that was the last meeting I went to.

Q. Don't you know the fact that Mr. Scott went around to the

meetings and stated that thing; didn't you go with him? A. Yes, sir; I went to some meetings with him; I went to Preston.

Q. Was any thing said about the $5 that was paid upon the street corner in that conversation? A. No, sir; I think not.

Q. Not a word said about it? A. I think not, sir.

E. H. PRINDLE, a witness called on behalf of the respondent, having been duly sworn, testified as follows:

Examined by Mr. GLOVER:

Q. Where do you reside? A. I reside at Norwich.

Q. What is your occupation? A. I am a lawyer.

Q. Will you state where, when and by whom you were employed in the matter of the bonding of the town of Greene? A. I was employed in the surrogate's office; in the office of Judge Prindle; and it was at that time that some people from Greene, Mr. Birdsell and others, were there with a petition, and Judge Prindle was engaged, I think, in drawing a notice to be published in the newspapers; I was in there; I can't state the occasion of my going to the office, but I recollect of being in there, and I think Judge Prindle and perhaps some others asked me some questions in regard to the matter, and I made some suggestions in regard to the form of the notice to be published.

Q. This notice was a notice under the act of 1869, required to be published? A. Yes, sir; Mr. Hays didn't come to my office or find me in the street or anywhere else to employ me; I was not employed or spoken to on the subject until I happened to be in there that morning; neither did Judge Prindle suggest my employment while I was there, to my knowledge; certainly not in my hearing.

Q. Go on and state all the facts? A. I recollect very well of feeling a little reluctant to say any thing about the form of the notice, thinking that these gentlemen from Greene might think I was trying to crowd myself into the case; I recollect distinctly feeling that, but I did, notwithstanding, make some suggestions in regard to the form and looked at the statute, and soon after that, whilst I was in there, Mr. Birdsell—Mr. Maurice Birdsell—spoke to me and retained me in the proceedings, and told me he wanted I should take charge of them and carry them through.

Q. Nothing was said in your hearing while you were there by Judge Prindle in relation to your being employed? A. Nothing whatever; I am fully satisfied and persuaded that he could not have said any thing without my hearing it.

Q. Do you remember the fact of Wm. G. Welch coming to your office? A. I do.

Q. Go on and state what took place; if he came there more than once, what was said and done at your first interview, and then what was said and done at the second? A. Mr. Welch came to my office I couldn't have told the date, but I should have stated it was in March; the date of the receipt, I believe, is the 7th of March; I should presume it was about that time; he came into the office some time before dinner, and said he had come to see me in relation to my bill; that he had no power to settle the matter or to agree upon any bill, but he wanted to get my bill; he stated further that they wanted to make a little present to the judge; he stated that the judge had performed a great amount of labor, for which he had received nothing, and that they wanted to make him a little present; he stated, furthermore, that no word had ever been spoken to Judge Prindle that he should receive any thing; that no intimation of the kind, in any way, shape or manner, had ever been made to him; that all transactions had been perfectly fair and honorable in every respect; he did not tell me that Maurice Birdsell had had any conversation with Judge Prindle, in regard to the matter, in regard to any pay or compensation of any kind; never said one word of the kind at all; I don't recollect in particular what I said; I didn't say much about the proposition.

Q. The proposition in relation to the judge? A. Yes; I might have told him that I would see the judge at dinner, and I might not; I can't say how that was, but I made out no bill whatever at that time; neither of $500 nor any other sum; nothing said about $500; I told him that he could have my bill after dinner; I was boarding at Judge Prindle's at that time, and at the dinner table I saw him; I told him that Mr. Welch had proposed to me that he wanted to make him a little present; told him in short what Welch had said to me; and he told me he wouldn't have any thing to do with it, whatever; after dinner I went back to the office; I made out a bill of a thousand dollars; I made out the bill at what I considered the services worth; I believe my services for the Greene Railroad Co. were worth a thousand dollars; Mr. Welch came into the office some time after dinner; Mr. Charles Shumway was present, a gentleman who had been in my office some time; when he came in I can't state whether he asked me for the bill or not; I handed him the bill; there was bnt little said, scarcely any thing; I handed him the bill of a thousand dollars; not one word

was said about Judge Prindle in any way, shape or manner. He took the bill, looked at it and I think he said he would take it down and see what they said, or something to that effect; and that was all.

Q. You saw the bill here which was presented? A. Yes, sir.

Q. That was the bill which has been offered in evidence? A. Yes, sir, that was the bill that I made out.

Q. And the only bill you made out? A. The only bill I made out. I should state further that there was no agreement whatever as to how that bill should be paid, nor any agreement that it should be paid at all; it was merely a bill that I made out for their consideration; I didn't know whether they would pay it or whether they would not. Subsequent to that time, I presume at the time of the date of the receipt, Joseph Julian came into my office, and left with me a thousand dollars in bonds of the town of Greene; I didn't notice at the time that any of the coupons were cut off, but subsequently I ascertained that a portion of the interest coupons were cut off; I think one year's interest was cut off, though I may be mistaken; it may have been only six months. At that time I gave Mr. Julian a receipt of this bill. I took the bonds, put them in my safe, and kept them there for, I should judge, two or three weeks; I could not say exactly how long; then I took them and deposited them in the Bank of Chenango, where they have remained ever since.

Q. You have drawn the interest as it came due? A. I drew the interest as soon as there was any to be drawn.

Q. Was any thing paid by you to Judge Prindle in consideration of that settlement? A. Not one cent.

Q. Or any agreement to pay? A. No agreement, expressed or implied, in any way, shape or manner whatever.

Cross-examination by Mr. STANTON:

Q. Mr. Prindle, about how long was the interview that you first had with Mr. Welch? A. It was but a few minutes; I can't say how long it was.

Q. What excuse did you give to him as the reason why you did not give in your bill then instead of waiting until after dinner? A. Well, sir, I think he wished me to see the judge, or something of that kind, or I told him I would see the judge.

Q. Then you didn't make out your bill until after you had seen the judge; told him you wanted to see the judge before you made

it? A. I did not tell him I wanted to see the judge; I didn't make out any bill whatever, sir, until after that interview.

Q. But have you any other reason to give why you didn't present your bill before dinner at that first interview than what you have stated? A. I don't think he asked me to present any bill before dinner.

Q. Have you not already sworn that he said he came to get your bill, and to see how much it was, when he first came in? A. He did come up to see how much my bill was; yes, sir.

Q. You didn't tell him the amount of your bill, you say, before you went to dinner? A. No, sir.

Q. Now, sir, what reason have you to give why you did not tell him the amount of your bill before you went to dinner? A. I have the reason that he made the suggestion in regard to making the judge a little present, as he said; I didn't dissent from what he said in regard to that at the time.

Q. And you made the proposition to the judge? A. I told the judge what he said; or the substance, in short. I had very few words with the judge at that time at the dinner table.

Q. How many bonds were paid to you by Mr. Julian in all? A. Well, I couldn't say positively, sir.

Q. What were the denominations? A. I know there was a $500 bond and some $100 bonds; and whether there was a $200 bond amongst them or not, I cannot now state.

Q. Were there any matters of account at that time between you and the judge?

Mr. GLOVER—Suppose there was; is it a question upon which the time of the Senate is to be taken up, to go into the private accounts between them; I object to that as being entirely immaterial.

Mr. MYGATT—Not only immaterial, but you might say impertinent.

Mr. STANTON—We insist upon the question, and ask for the ruling of the Senate; I think that the object of the evidence is apparent; it would be a very easy matter indeed to credit $500 on account.

The question being put as to whether the objection should be sustained was decided in the negative, and the objection decided overruled.

By Mr. STANTON:

Q. Will you answer the question, sir? A. Yes, sir; I will answer it; I don't know exactly what you mean by matters of account; we had no book of account; he had some time previously, I can't say exactly how long, borrowed of me $400 in money.

Q. Any further matters of account or matters of deal? A. No matters of deal between us except these; I have boarded with him a good many years, with the exception of three years that I kept house.

Q. You never kept any book of account? A. No, sir.

Q. Has the matter of the $400 been paid? A. Yes, sir.

Q. Paid in money? A. Yes, sir.

Q. Was there ever any credit or allowance by you to the judge in relation to this matter? A. No, sir.

Q. Never? A. Never.

Q. Never any understanding that there was to be any allowance? A. Never any understanding at all that there was to be any allowance.

Q. Mr. Prindle, at the time you went into the office of Judge Prindle, you found Mr. Birdsell there, did you not; at the time of the drawing of this order? A. I think so; yes, sir.

Q. Now you don't pretend to say whether the judge had made some allusion to you as counsel previous to that, do you? A. No, sir; not previous to the time I went in there.

Q. You say those bonds are all in the Bank of Chenango, now? A. Yes, sir.

Q. To your own credit? A. They are, unless somebody has taken them away without my authority or knowledge.

Mr. STANTON—That is all.

The WITNESS—I would state further, that I was retained, as Mr. Birdsell stated, generally, as the attorney of the company, and that I did perform services for them afterward. I was telegraphed to go to Greene, and was there a couple of days. I will state further that I was urgently requested to engage in the matter of the Smithville Railroad, but declined because I was retained by the Greene Railroad Company. I never have had any settlement with the Greene Railroad Company.

By Mr. STANTON:

Q. When was the next time that you had any conversation with Judge Prindle in relation to this transaction of the payment of your bill? A. Well, sir, I can't recollect any particular conversation with him.

Q. Did he ever inquire of you how you got your pay? A. I presume I told him, but I have no distinct recollection of any particular conversation with him, except more recently, after some stories were started; I had conversation with him a year or two afterward.

Q. Do you say there was nothing said in the conversation between you and Welch about the sum of $500? A. Nothing, sir.

Q. Never mentioned? A. No, sir.

Q. You never made any statement of the amount of your bill previous to the time that you made out the bill of $1,000? A. No, sir.

By Senator PERRY:

Q. Mr. Prindle, I would like to inquire of you whether there were any words passed between you and the judge, while you were at dinner, as to what the amount of your bill should be? A. No, sir.

Q. Nothing said as to what you were to charge or intended to charge? A. No, sir; I hadn't made up my mind.

Q He didn't ask you and you didn't tell him? A. No, sir.

Q. Now, you say there was some conversation took place between Mr. Welch and you, previous to your going to dinner, about this present? A. Yes, sir.

Q. And that you think you spoke to the judge about it? A. I either did that or said nothing; I can't say which it was.

Q. Well, on your return after dinner, did you communicate to Mr. Welch what the judge had said to you? A. I didn't say one word to him about it.

Q. Did he ask you what the judge had said? A. He did not.

Q. Was there any thing, then, after you returned from dinner, passed between you and Welch in reference to this present, directly or indirectly? A. No, sir.

Q. He simply took the bill, as you had made it out, and departed? A. Yes, sir; I think he said he would take it there and see what they said; Mr. Welch had told me on the stairs that he had no authority to agree to any thing or settle any thing.

CHARLES SHUMWAY, a witness called in behalf of the respondent, testified as follows:

By Mr. E. H. PRINDLE:

Q. Where do you reside, Mr. Shumway? A. In Norwich.

Q. You know William G. Welch? A. I do.

Q. Did you read law in my law office? A. I did; I was there about three years and a half.

Q. Do you remember Mr. Welch coming there to the office in the month of March, 1870? A. Well, it was some time about the month of March; I couldn't state just exactly when; I remember of his coming there.

Q. Can you state what was done? A. Well, it was some time after dinner; Mr. Welch came in, and I won't be positive whether it was before that or during the time that Mr. Prindle made out the bill, and presented the bill to Mr. Welch; Mr. Welch took it and looked at it, and said that he would take it down and see what they said about it.

Q. Was one word said in reference to Judge Prindle in that conversation? A. There was not; Judge Prindle's name was not mentioned.

Q. Is that all that you recollect that was said? A. That is all of the conversation that I recollect of.

Q. You were not present in the forenoon? A. I was not; I know that Mr. Welch was there but a very few minutes.

Cross-examination by Mr. STANTON:

Q. Did you make any memorandum of this transaction? A. I did not.

Q. Is there any particular thing that you judge from as to the exact time of day? A. It was after dinner, I know; it was in the afternoon.

Q. Did you ever see Mr. Welch at that office more than once? A. Yes, sir.

Q. How many times? A. Well, I couldn't state; I know that was about ten days, perhaps it wasn't as long as ten days; at the time they were bonding the town of Greene he was in there from five to six times a day, and I worked with him nights, sometimes as late as three o'clock.

Q. Can you tell the particular time of day that he came in there on any other occasion? A. Well, I don't think of any now.

Q. You cannot state any other day, stating the time of day when he came in? A. No, I cannot.

Q. Can you state any other day, stating how long he remained in the office? A. I cannot now think of any.

Q. Can you state the business that he did at any other time when he was there, than the one you have given? A. Yes, sir; I know he was there one night five or six hours, and added up columns of figures.

Q. How many times have you seen him in the office there consulting with Mr. Prindle? A. I couldn't say; quite a number, I should judge.

Q. Did I understand you correctly in your direct examination that you was not certain whether it was before or after dinner that Mr. Prindle presented his bill? A. It was when he made out his

bill, and he either made it out before Mr. Welch came in, or afterward, and I couldn't state which.

Q. Do you know how he came to make out this bill that day at all? A. I do not.

Q. What part of the office were you in at the time you heard this conversation that you speak of? A. I think that we were in the front office.

Q. Did Mr. Welch and Mr. E. H. Prindle go into the back office at that time, while you were there? A. They did not.

Q. You are positive about that? A. Yes, sir; very positive.

Q. What part of the room were you in? A. It was in the room that we occupied over Foote's store; it is my impression that at that time the partition was not taken out, and we were in the south part; that was the room that Mr. Prindle generally occupied.

Q. Were you all in one part of the office? A. I know we were; we sat around Mr. Prindle's desk.

Q. All of you sitting there? A. There was only three of us; Mr. Prindle and myself were sitting there, and Mr. Welch, I think, had not sat down at that time.

Q. Did you see Mr. Prindle when he made out his bill? A. I did.

Q. Where did he put it after he made it out? A. Well, I cannot state positively where he laid it.

Q. Did you see it after you saw him making it out? A. Well, I can't say that I did.

Q. Did you read it? A. I did.

Q. Took it in your hand and read it? A. No, sir; I sat there and saw him when he made it out, and read it.

Q. Now, you don't know whether he had made out any bill previous to that or not? A. I do not.

Q. Do you pretend to say, sir, that you heard every word that passed between Mr. Prindle and Mr. Welch on that occasion? A. Well, I think I must have heard every word.

Q. Do you know, sir, that you heard every word? A. Well, I think I did; Mr. Welch was not standing farther from me than you are.

Q. Did you see Mr. Welch when he went out? A. I think I did; I know I did.

Q. Are you positive about that? A. Yes, I am sure I did.

Q. Did you see him when he came in? A. Yes, sir.

Q. How long was he in there? A. I don't think he was in there more than five minutes.

Q. Who handed the bill to Welch? A. Elizur Prindle.

Q. In your presence? A. Yes, sir.

Q. When was your attention first called to this matter after that? A. Well, I couldn't tell when it was.

Q. Who first called your attention to it? A. Well, I think the first time my attention was called to it, at the time I read the charges that were preferred against Judge Prindle; I recollect the transaction though.

Q. Who did you first talk the matter over with? A. I couldn't state.

Q. Was it Mr. E. H. Prindle? A. I don't think it was.

Q. Have you talked it over with him? A. Yes, sir.

Q. How many times? A. I cannot state.

Q. A good many times? A. No, sir; two or three times probably.

Q. You also have been very active in the defense of Judge Prindle, have you? A. Quite so.

Q. Take a great deal of interest in it? A. Yes, sir.

By Mr. E. H. PRINDLE:

Q. Did you know the amount of that bill? A. I did.

Q. How much was it? A. It was $1,000.

JAMES W. GLOVER, a witness called in behalf of the respondent, being duly sworn, testified as follows:

By Mr. MYGATT:

Q. Mr. Glover, are you a lawyer, living at Oxford, Chenango county? A. Yes, sir.

Q. Were you present at the Republican county convention that nominated Judge Prindle for county judge? A. I was there a little while.

Q. Judge Prindle was nominated at that convention, was he? A. Yes, sir; I was not there when the nomination was made, but he was nominated.

Q. Subsequent to his nomination, did you go to his office to investigate certain charges that were made against him.

Mr. PECKHAM—What is the object of this testimony?

Mr. MYGATT—The object is to show that the witness at that time examined the several items that were charged by Mr. Ray for servi-

ces rendered. And then we shall ask the witness if he found the charges reasonable.

Mr. PECKHAM — We shall object to that.

Mr. MYGATT — That is, his charges rendered as attorney or counsel in the surrogate's court; whether his charges were reasonable; the charges of Mr. Ray in these several estates about which evidence has already been given. The simple question is, whether he investigated those charges at the surrogate's office, ascertained the amount of services rendered by Mr. Ray, and whether, in his opinion, they are reasonable charges to be made for those services.

Mr. PECKHAM — We object to that, Mr. President, on the ground that it is entirely immaterial to any issue involved in this investigation. Whether Mr. Glover went and examined the books or the charges of Mr. Ray in this matter, what conclusion he came to, what investigation he made, it seems to me is entirely immaterial, and not evidence upon any issue whatever involved in this proceeding. It is simply the opinion of Mr. Glover in regard to those charges; not in any sense an opinion by which this Senate should be guided, or upon which the Senate should be controlled in any form or manner. It seems to me that it is plainly immaterial.

Mr. MYGATT — It is charged, Mr. President, that Mr. Ray has been guilty of conniving with Judge Prindle in making illegal and extortionate charges, if you please, since he has held the office of surrogate. Mr. Glover is a lawyer; he is called not to prove services rendered, or not rendered, but he is called to testify as to the value of those services rendered, which is the subject of examination here. Among other things it is charged that Mr. Ray has connived with Judge Prindle in charging an over amount to suitors in that court. It is pertinent and proper for us to show here that the charges made by Mr. Ray have been moderate and reasonable, and have not been unjust toward any one. It is for that object we call him.

Mr. PECKHAM — Let us see for a moment how we stand in this case, Mr. President. One charge is that George W. Ray was a clerk in fact, although not the statutory clerk of the surrogate; that parties would come to the office for the purpose of transacting business there with the surrogate; that they would have consultation with the surrogate in regard to letters of administration, or letters of guardianship, or whatever they were, and that these parties, not having employed Mr. Ray, as they swear, in any way at all, would be turned over by Judge Prindle without their knowledge to have

the work done by Mr. Ray, which they claimed to have had done by Judge Prindle, and then Mr. Ray, having done that work which they supposed was surrogate's work, and was being done by Judge Prindle, or through his own clerk, these charges are made. Now, as I understand it, the point is to show that the charges for services performed by Mr. Ray were reasonable charges for those services. Now it does not seem to me that this meets the case at all. One charge is, that this was done by the clerk of Mr. Prindle, when Mr. Prindle was employed in official business, and where Mr. Ray had not been employed at all. Whether these charges would have been reasonable if some other man had performed them, upon the retainer of these different parties who swear to transacting business officially with the surrogate, is one question; but whether, when they went there to do business with the surrogate, not employing anybody, that Mr. Ray should come in and do certain work which had been ordered to be done by Mr. Prindle, and then by charging for those services, if those witnesses come on and swear that these fees were proper and right, it seems to me it is usurping the right of this Senate.

Mr. MYGATT—Mr. President: There is this about this matter. It is all a question of evidence whether Mr. Ray was there as clerk, or whether he was there as a lawyer, or an attorney having suitors in that court. It is a question of evidence to be determined by the Senate before they can come to the other question, and if the Senate should determine that Mr. Ray is a lawyer, if he was advertising as a lawyer in the public papers, and posted his notice at the entrance to the surrogate's office, that he was an attorney and counselor at law, acting in that court, if you please, if the Senate come to the conclusion that he was there properly as a lawyer, and not as a clerk, then it becomes a matter pertinent to the issue as to whether the charges were moderate and reasonable. The evidence is proper in the case, with all the other evidence in the case; if the Senate determine he was there as a lawyer, then it is proper that we give evidence to show that these charges were reasonable as a lawyer.

Mr. PECKHAM—There is not one word in the charges which can be found where any charges were made against Ray for services performed by him, exclusive of the fact that he was acting there as clerk.

Mr. MYGATT—Suppose the Senate say he was there as a lawyer?

Mr. PECKHAM—Then it don't come within these charges at all; no complaint made in that respect.

Mr. MYGATT—Do you concede then that they are reasonable charges?

Mr. PECKHAM—I make no concession one way or the other; it is a matter for the Senate to determine.

Mr. MYGATT—We ought to be allowed to show these were reasonable charges, in order to take away any suspicion of wrong.

The PRESIDENT put the question upon the objection, and the ayes and nays having been demanded by Senator Johnson, it was decided in the negative—Ayes, 4; noes, 15.

Q. Did you attend at the surrogate's office at the request of Judge Prindle, with other gentlemen, to examine the various charges made against him at the Republican convention, at which he was nominated? A. I think I did go with the other gentlemen who made that investigation; I was there separate from them; I came in after you and Mr. Bundy had made the investigation.

Q. I think you took the report? A. I took the report which was finally signed by us all, and went to Norwich and made an examination.

Q. Of the facts stated in the report? A. Yes, sir.

Q. You examined some twenty odd charges? A. I think it was as many as that; I have not looked at the report, I think, since about election time.

Q. Were they for services rendered? Did you find that these services were rendered by Mr. Ray—many of them—from an examination?

Mr. STANTON—Mr. President: We would like to interpose an objection to general questions, and have the counsel confine his inquiries to particular charges.

Mr. MYGATT—It is with the view of coming to these particular charges; I shall come immediately to specific charges.

Mr. STANTON—Very well.

Q. [Showing paper] Is that a statement of the charges that were made, which were investigated at that time? A. Yes, sir.

Q. Are there many specific entries there of charges for services rendered by Mr. Ray? A. Yes, sir; quite a number.

Q. Please state some of them? A. I have not looked lately at that paper, and I don't know whether it embraces any of the charges before the Senate? A. My impression is that it embraces a few of the charges now before the Senate; I don't think it is contained in this paper, all of them, in the charges made before the Senate; I could state generally what I done in the matter, and what I found

generally; this paper I signed at the time, and I published it, and I believe it to be correct.

Mr. STANTON—We object to the witness stating generally what he found.

The WITNESS—What I found in relation to these particular charges; what I meant by "general" was that there were certain charges against Judge Prindle in the convention, and they were subsequently (the next week) published in one of the papers of the county, and I think the publication contained some more charges, if I recollect right, than were stated in the convention. Judge Prindle came to my office—my impression would be that it was the following week after the convention, Saturday, but I am not very positive as to the time; I should think, however, that it was the next week Saturday—and he presented this paper to me, which contained a statement of the charges which had been published, giving a statement in explanation of those charges. It was then signed by four gentlemen—Mr. Chase, Mygatt, Mr. Bundy, and Mr. Plumb. He desired me to go to his office at Norwich, and look over his books, papers, and records, and see if I could consistently sign this paper. I did so, and made an examination of each of these charges, and the books and papers were all presented to me, and I looked them all through. I spent the whole afternoon there and made an examination of the items in this paper, and signed this certificate. The charges which I found, so far as the question was concerned as to reasonable charges, I found the charges that Mr. Ray made were not unreasonable charges for the services rendered.

Mr. STANTON—Mr. President: We will state in regard to this evidence that this is precisely the evidence to which we desire to object. Let the witness state the particular charge which he says is reasonable, that this Senate may be able to judge of the credit due to the evidence, and the judgment of the witness. We do not desire any thing brought in here which does not pertain to the charges now before the Senate. In his "summing up" we say he should pass particularly upon each particular charge, and say that that was reasonable, so we can be able to ask him what services were rendered in this and that case, and the Senate may then judge of the reasonableness of the charges.

Mr. MYGATT—They are particularly specified there; all that may be done is to read them, and then you have them in evidence. We desire that that paper should be regarded in evidence.

Mr. PECKHAM—We shall object to the paper as entirely immaterial.

Mr. MYGATT—We will ask the witness to direct his attention to the particular items. I simply adopt this mode of getting the evidence as being the shortest way of reaching it.

Q. Well, please point out the particular items of services rendered by Mr. Ray? A. It would take some time for me to see what particular items are contained in this certificate; I should have to take it to compare these with the charges presented to the Senate; it would take considerable time to pick them out.

Q. I will call your attention to that, Mr. Glover: "Joseph King, executor of Fuller P. King, paid upwards; Mr. Ray drew all the papers in obtaining letters and paid the disbursements, and drew the affidavits to properly authenticate them in foreign States; obtained order for publication and notice to creditors, and gave much advice and counsel, for which he charged and was paid $60 for all his services and disbursements. Further, as to the charge that C. H. Babcock, administrator of Almon Trask, paid $14, and employed no person; we find that Almon Trask made a will of which Bradley F. Gregory was executor and Eliza Trask executrix, and that Mr. Babcock was not an administrator of this estate; further, as to the charge that Austin Barrows, executor of Reuben Sears, paid February 12th, 1869, $65, and employed no person; Mr. Ray was employed as an attorney, as the account sworn to by the executor on the final settlement shows, and drew all the papers on the proof of the will, and in obtaining letters of guardianship; he also drew the petition and accounting on the final settlement, and receipts from the heirs, and received from Mr. Barrows $58, March 12th, 1870; the stamps were $7.15; then as to the charge that Austin W. Barrows, executor of Anna W. Barrows, paid $50, we find that Mr. Ray drew all the papers on the proof of the will, and on the final settlement received $37.57, out of which he paid for stamps and publication fee $19.45?" A. I cannot go through now and state that.

Mr. MYGATT—We now offer that as an exhibit in the case, and we will ask Mr. Glover if he found those services to be reasonable?

The paper was here marked Exhibit 45, and is as follows:

EXHIBIT No. 45.

Grave charges having been made against the official conduct of Judge Horace G. Prindle, which were published in the Chenango *Union* in its issue of September 27th, 1871, and he having invited us to investigate them, we hereby certify that we have investigated the same by examining the records, papers and proceedings in the

surrogate's office and otherwise, and make the following statement of facts in relation thereto.

As to the charge that $40 was paid September 4th, 1869, for proving the will of Sarah C. and Russell Furman, to perfect the title to a little real estate, we find that there were two wills proved instead of one, and that Mr. George W. Ray, as an attorney at law, drew the petitions, copies of citations, proofs of service, copy of wills and attending to the probate of the same, and received the sum of $40 for his services.

As to the charge that "May 15, 1871, Henry Holmes, Columbus, paid for proving the will of Loomis Richen, $25," we find that the will of Loomis Richen was proved at the time stated. Mr. Ray drew the petitions for the proof of the same, made the copies of the citations for service, proof of service, copy of will attached to probate, etc., and attended to the probate of the same. Mr. Ray was also the special guardian of an infant in the matter; he used stamps to the amount of $4.15, and received from Mr. Holmes the sum of $25 for his service and the stamps.

As to the charge that "September 28, Sophronia A Mathewson, New Berlin, paid for final settlement of estate to John W. Mathewson $15," we find that Jason E. Mathewson, the late sheriff, was the administrator who employed Mr. Ray in the matter. Mr. Ray drew the petition, account, etc., and received the $15 for his services.

As to the charge made in the following language, "Samuel L. Brown, executor of Asher Baldwin, paid for drawing petition, $6; he asked for blanks to draw the petition himself, and the surrogate told him to let Mr. Ray draw it," we find that Mr. Ray drew the petition and all the other papers, went out and purchased the stamps and received the $6 for his services.

As to the charge "Sterling estate, Pope executor, he employed no one, paid $25," we cannot find that any proceedings have been had in the surrogate's office in relation to such an estate.

As to the charge that "July 16, 1870, Riley Dutton, executor, paid, aside from stamps, $25, there was no publication and he employed no one and supposed it surrogate's fees," we find that all the papers were drawn by Mr. Ray; that he furnished stamps to the amount of $4.15 and received for stamps and services $20.15, July 16, 1871.

As to the charge that "Joseph King, executor of Fuller P. King, paid upward of $50," we find that Mr. Ray drew all the

papers in obtaining letters, and paid the disbursements; that he spent four days in the final accounting, his account being fifteen pages in length, and very complicated. He drew affidavits and certificates to properly authenticate them in a foreign State, obtained order for publication of notice to creditors, and gave much advice and counsel, for which he charged and was paid the sum of $60 for all his services and disbursements.

As to the charge that "Thomas Clark, as executor of Reeve Dilley of New Berlin, was charged $100; he paid $70; he employed no attorney, and there was no contest," we find that Mr. Ray drew all the papers and paid all the disbursements. There were over sixty persons, upon whom citation had to be served. The publication fee was $24.57. The stamps, $7.80. He went personally to Cortland and served citation on a portion of the heirs, his livery bill for the trip being $4. He acted as special guardian for several infants, on proof of the will. The papers he drew were necessarily very voluminous, and he charged $100, of which he has received $70. We think the charges for his services, in this case, quite moderate, considering the amount of work involved.

As to the charge, that "Warren Reynolds, executor of Loren Beebe, of New Berlin, paid over $60; there was no contest, he employed no attorney, and he supposed it surrogate's fees," we have examined the final account, sworn to by the executor, in the handwriting of an attorney at law, and it shows no such payment.

As to the charge, that "H. O. Mass, New Berlin, executor of Samuel White's estate, paid about $30," we find that the necessary stamps upon the letters was $25, and that there was a special guardian appointed in the case. It is proper to allow special guardians, in such cases, $10 as a just and reasonable compensation.

As to the charge, that "Chancellor H. Babcock, of South New Berlin, executor of Cyrel Carpenter, paid $30, employed no one, and made out most of the papers himself," we find that E. H. Prindle was employed in the matter, and drew the petition; the stamps were $2.65. Mr. Ray drew other papers, and attended to the probate of the will, and charged for the whole service, including the stamps, $20. Mr. Ray subsequently drew the account for the final settlement, petition, etc., and attended to the final settlement, which was twice adjourned, the widow appearing and making various objections, and was allowed and paid $30 for his services.

As to the charge that "Chancellor H. Babcock, administrator of Almon Trask, paid $14 and employed no person," we find that Almon Trask made a will, of which Bradley F. Gregory was executor, and Eliza Trask, executrix, and that Mr. Babcock was not an administrator of this estate.

As to the charge that "Austin Barrows, executor of Reuben Sears, paid February 12, 1869, $65, and employed no person," we find that Mr. Ray was employed as an attorney, as the account sworn to by the executor on the final settlement shows, and drew all the papers on the proof of the will; and in obtaining letters of guardianship, he also drew the petition, and account on the final settlement, and receipts from the heirs, and received from Mr Barrows $58, March 12, 1870. The stamps were $7.15.

As to the charge that "Austin Barrows, executor of Anna W. Barrows, paid $50," we find that Mr. Ray was employed, as the sworn account of the executor shows, and drew all the papers on proof of the will and on the final settlement, and attended to the final settlement and received $37.57, out of which he paid for stamps and publication fee $19.45.

As to the charge that "Riley Dalton, executor of Simon Hill, paid $20," we find that *Riley Dutton* paid $20. This was in 1866, and the surrogate's fees and blanks were $13.50; there was a special guardian in the case and the balance was for compensation to special guardian.

As to the charge that "E. D. Haywood, executor of Isaiah Loomis, paid $10, called surrogate's disbursements," we find that Mr. Atkyns was employed in the case, and he employed Mr. Ray to attend the probate of the will, which he did, drawing affidavits, copy of will and other papers, paying $1.65 for stamps, and charging and receiving $10 for services, including stamps.

As to the charge that estate of "H. H. Angell paid over $60; no publication and no contest, no one employed," we find that Mr. Ray received $39.65, of which $10.15 were for stamps. There was a special guardian appointed. Mr. Angell, the executor, made the account *in his own handwriting* for the final settlement. In that account is the following item: "paid G. W. Ray, services and stamps, $39.65."

As to the charge that "Warren Wightman, executor of Orrin Dilley, paid $15.00," we find that Mr. Ray was special guardian for an infant. The stamps on letters and certificate were $3.65. Mr. Ray drew copy of the will and received for the whole the $15.00.

These cases extend from 1866 down to 1871. It is proper for us to state that Mr. Ray had his law office in the surrogate's office, having previously read law in the same office, and soon after he was admitted to practice, in November, 1867, published a notice in each of the newspapers published in the village of Norwich, which notice has ever since continued to be published in the same, advertising himself as an attorney and counselor at law; "special attention given to all proceedings in surrogate's court, proof of wills, settlement of estate," etc.

The drawing of petitions and papers for the proof of wills, for the granting of letters of administration and guardianship, and final accounts of executors and administrators, is no part of the duties of the surrogate or the surrogate's clerk, but properly belongs to the province of a lawyer, and is a proper charge against the estate. We think that the charges of Mr. Ray, in the foregoing cases, are none of them unreasonable and some of them quite low.

In regard to the suit commenced in the Supreme Court by Judge Prindle for authority to sell the real estate of Anna W. Barrows, deceased, we have examined the judgment roll and other papers in relation to the estate, and we find that there were fourteen defendants, some of whom were non-residents of the State; that the whole costs and expenses of the suit, including the expenses of the sale of the premises, were fixed by the Supreme Court, and were not to exceed the sum of $350; that out of this sum Judge Prindle paid all the expenses in the suit. By the terms of the will of the said Anna W. Barrows, deceased, $200 was given to the Congregational Church of Columbus, $100 to the American Board of Commissioners of Foreign Missions, $100 to the American Home Missionary Society, and $50 to the American Bible Society, together with other specific legacies; that all the above legacies and all specific legacies have been paid in full, as appears by the vouchers on file in the surrogate's office. In this case Judge Prindle was acting as an attorney and counselor at law, and not as a surrogate. Mr. Ray received no money from the estate, except the $37.57, above explained.

Having ascertained the foregoing facts, we think justice requires that they should be made public.

LESTER CHASE.
HENRY R. MYGATT.
SOLOMON BUNDY.
JAMES W. GLOVER.
ISAAC PLUMB.

By Mr. GLOVER:

Q. Did you find those services to be reasonable? A. I thought the services, or the charges for services, were not unreasonable, as the services appeared from the books and papers.

Q. Did you attend, on behalf of Judge Prindle, before the board of supervisors last autumn on the proceedings commenced, requiring him to produce before them the books, papers, etc., of the surrogate of Chenango county? A. I was there in that proceeding; before the board as one of Judge Prindle's counsel.

Q. Judge Prindle has an office in the village of Norwich as surrogate? A. Yes, sir; the county clerk's office is in the first story, and the surrogate's office in the second story.

Q. The court-house of the county is very near to the clerk's office? A. A few steps; perhaps four rods.

Q. And the supervisors held their sessions in the court-house of the county? A. Yes, sir.

Q. It appears, from these records before the Senate, that Judge Prindle at that time refused to produce the books and papers of his office before the supervisors on their request; what occurred there; under whose advice did he act; what were the circumstances? A. He acted under the advice of both of the counsel who appeared for him, yourself and myself, also Mr. Hubbard; we had consultation upon the subject; Mr. Elizur Prindle was present at the consultation; I don't remember whether there was any other lawyer there; the four were there, I know; a consultation was had in the surrogate's office in relation to it, and he was advised not to submit to the examination by the board of supervisors upon the ground that they had no authority, nor judgment, to make the examination which they proposed.

Q. Under the circumstances of the case he was advised not to do so? A. Yes, sir.

Q. You so advised and the others agreed? A. Yes, sir; we all agreed that they had no authority.

Q. He acted entirely under the advice of counsel? A. Yes, sir.

Q. Mr. Ray advertised, didn't he, as an attorney and counselor at law? A. The advertisement is in the paper; I have seen it very many times.

Q. Are there two papers published at Norwich? A. Yes, sir; the *Telegraph*, a republican paper, and the *Union*, a democratic paper.

Q. Did he advertise that he paid special attention to surrogate business? A. That was a part of the card.

Q. Was there a public notice as you entered the door of the surrogate's office? A. Yes, sir; there was up to the first of January; I cannot tell how long it was there; it was there some years, I think; I frequently noticed his sign as I went into the surrogate's office; his sign as an attorney at law.

Q. Since the first of January there has been a change in the office? A. Yes, sir.

Q. Have you been at the office since the first of January? A. Yes, sir; occasionally.

Q. Mr. Ray has not been there since that time? A. I have seen him in there.

Q. But he has not been there as a lawyer since that time? A. No, sir; I think not; I believe it is understood that he is not there; I know, in fact, that he has an office by himself, or at least with other parties; he formed a copartnership after the first of January, and is in business there.

Cross-examined by Mr. PECKHAM:

Q. Where was this paper drawn? A. I cannot tell you; it was presented to me.

Q. You found it just as it is now, with the exception of your signature? A. No, sir, I remember making some memorandum; at least some alteration.

Q. You went into the office of the surrogate at what time of the year? A. Well, it was in September or October of 1871; the convention was held in September, and I went to New York on the 10th of October; and it was between the holding of the convention and the time I went to New York.

Q. Who else was with you when you went in? A. I don't know as any one went with me; that paper was signed by the other gentlemen at the time.

Q. You made this examination alone; while you were examining you were alone? A. Yes, sir; there were other parties who belonged in the office there, and showed me the boooks and papers, etc.

Q. Any one else examining the papers with you? A. No, sir.

Q. Upon what data did you proceed in order to come to a decision in regard to the reasonableness of these charges? A. I took the records and papers which had been drawn in each of the causes and looked at various services that had been performed.

Q. How did you know they had been performed? A. I could see from the papers themselves.

Q. How do you know they were performed by Mr. Ray? A. I could see it by the writing; I knew his handwriting very well.

Q. Simply from the handwriting you saw there? A. There were some statements made to me; the papers were shown, and all of the books and papers relating to these various cases were shown to me.

Q. Statements made by whom? A. Mr. Ray made some statements to me; I remember one case now that occurs to me.

Q. Who else made any statement? A. I think Judge Prindle made some statements; more particularly the statements made to me calling my attention to the various papers; the various services rendered.

Q. There was nothing there by which you could pass upon whether he had been retained or employed in this business? A. No, sir; except that I found in some of the final accountings (all which I looked at) the statement of the amounts paid to him as attorney and counselor, and sworn to by the administrator or executor, as the case might be.

Q. Were any of those contained in any of the printed charges before the Senate now? A. I cannot tell you.

Q. Can you specify any one case in which that occurred? A. I don't know that I could now, sir; I know, as I had that list of charges, that I found some of them in that situation; I don't know that I could say as to any particular charges before the Senate.

Q. Do you remember in whose handwriting all these final accountings — this item of George W. Ray, so much for services — was in; whether in Mr. Ray's handwriting? A. I think it was; I should think it was so in all those final accountings; that is my recollection; I am not very positive about it; there was perhaps one that was not; I have an impression that one was drawn up by the executor himself, in which there was an item, but I am not positive about that.

Q. Whether contained in any of the charges before the Senate now, you cannot state? A. No, sir; I have a general recollection about that, but to go into minutiæ, I should have to reflect some.

Q. Mr. Stanton desires me to ask whether that was not in the Angell case? A. I cannot state; whether that was the case or not I cannot state; I have an impression that there was one case where the administrator drew up the account himself.

Q. Was any one present on this examination by you, who claimed to have been injured in any way; any one there in opposition,

either in feeling, or any other way, to Judge Prindle? A. No, sir, not that I know of.

Q. Entirely an *ex parte* matter? A. Yes, sir.

Q. Performed under the auspices of Judge Prindle and Mr. Ray? A. Performed by me at Judge Prindle's request.

Q. Your judgment was formed upon the statement made by them, and from the records and papers? A. Yes, sir, mainly from the papers and records.

Q. How long were you there? A. I think four hours; I went up immediatly after my dinner and returned in the evening.

Q. You were counsel for Judge Prindle in this matter before the board of supervisors? A. Yes, sir.

Q. It was under your advice, in conjunction with Mr. Mygatt and some other attorney, that the judge refused to answer the question put to him by the board? A. Yes, sir.

Q. You have been the counsel of the judge in this proceeding generally? A. Yes, sir; I have advised with him; I was not here at the time of the hearing before the Senate on a demurrer, though I have been talked with from time to time on the subject.

Q. Was this document you have signed here published during the campaign? A. Yes, sir; prepared for that purpose.

Q. Prepared for the purpose of publishing. A. Yes, sir.

By Senator BENEDICT:

Q. Campaign document? A. It was prepared for the purpose of meeting the charges published against Judge Prindle; that was the design of it.

Q. Did you read this statute, Laws of 1858, chapter 190; did you read that statute before you gave the advice to Judge Prindle? A. Yes, sir.

Q. It was upon your construction of that statute? A. Yes, sir; I had that statute before the board of supervisors and argued as to their power under that statute.

Re-direct examination by Mr. MYGATT:

Q. When that paper was prepared, do you mean to say it was got up as a campaign document? A. No; I say these charges were made, and this certificate was prepared for the purpose of showing the facts in relation to that for publication.

Q. Hadn't Judge Prindle then withdrawn or resigned from being a candidate? A. I can't tell whether it was during that time or not.

Q. After the charges were made against him in the republican

convention, he put in the hands of the republican committee of the county a resignation as being candidate for the office of county judge? A. I am under the impression it was.

Q. At the time of the investigation, had not he declined being a candidate for the office, placing it, however, under the direction of the committee of the county; the republican committee? A. I remember now, it was; I remember a conversation with Judge Prindle in relation to the fact; it was after he withdrew from the canvass, and before he again consented to run.

Q. This investigation was by about the same number of democrats as republicans; it was not a campaign document gotten up by republicans nor democrats? A. Somebody else said it was a campaign document; I didn't say that.

Senator BENEDICT—I said that.

The WITNESS—It was got up for the purpose of publication; we aimed to state the facts about it.

Re-cross-examintion by Mr. PECKHAM:

Q. Did Judge Prindle withdraw? A. He did at one time; he gave the county committee, as I understood, notice that he would not run.

Q. He did give the county committee that notice? A. So I understood; it is mere hearsay; it was so understood.

Q. How long did that understanding last? A. I should think about a week, but I am not positive about it.

Q. How was the withdrawal withdrawn? A. I can only say what I understood; I was not present.

Q. State that? A. I understood the county committee got together and urged his continuance as a candidate, and that upon their solicitations he consented to withdraw the declination; that was as I understood; it is mere hearsay; I was not present.

Q. Do you know whose handwriting this document is in? A. I cannot tell.

Q. Is it the handwriting of E. H. Prindle? A. I should not think it was; I should be of the opinion that it was not; it don't look like it to me.

Mr. E. H. PRINDLE—I don't call it mine.

The WITNESS — It is not his usual handwriting; I should know his handwriting, I should think; you don't call it his handwriting, do you?

By Senator PERRY:

Q. I desire to inquire of you when you made this investigation which has been put in evidence; was this after the board of super-

visors had passed the resolution? A. Oh, no, sir; it was before; it was before election.

Q. Before the board of supervisors passed the resolution which you had given advice about, as you have testified? A. Yes, sir; some weeks before.

Q. Was it before or after you gave this advice? A. Before.

Q. Before you gave the advice? A. This was long before election, and the meeting of the board of supervisors was after the election.

Q. State particularly what the board of supervisors required by their resolution, as you understood it? A. It is a printed resolution; required for him to ——; I can't remember what the resolution is.

Q. To submit to an examination of his accounts? A. All the conduct of his office, as I understood it.

Q. What was the particular ground on which you advised him not to respect that resolution? A. That a board of supervisors had no power to make the examination contemplated by their resolution; no legal power or right.

Q. Was that advice communicated to the board? A. Yes, sir.

By Mr. MYGATT:

Q. It was in the presence of the board? A. Yes, sir; that is, these objections were stated by the counsel.

Q. Did the board of supervisors accept that conclusion as a settlement of the law on the subject; did they take any further steps or proceedings to carry out the resolution? A. No, sir.

Q. That ended the matter? A. Yes, sir, as I understand it.

Q. Never followed it up by attempting to question your advice or opinion on the law? A. They didn't go any further.

Q. They passed a resolution that they would not go further; they were invited to go to the Supreme Court, were they not? A. We urged them there in our argument to them; that the statute provided a remedy, if we were wrong in our ideas, and urged them to take the proceedings contemplated by the act of 1858, to bring Judge Prindle in contempt before the Supreme Court.

Q. Didn't we state to the supervisors that Judge Balcom was at home, and that we would go to him without any delay and be determined by his decision? A. Yes, sir.

Q. Didn't the board of supervisors pass a resolution that they would not go before him?

Mr. STANTON—We have an objection here; the counsel for the

respondent have agreed that the printed statement of the proceedings of the board, as certified to by the clerk and attached to the charges here, shall be recorded as the evidence and a true statement of the proceedings of that board; I suppose that is the best evidence.

The PRESIDENT—This is something beyond what is stated there.

Mr. STANTON—Mr. Mygatt, the counsel for the respondent, I believe, when the proposition was made that we would regard this as being the true record of the proceedings, stated they were substantially correct.

Mr. MYGATT—We did admit it, but we reserved the right to give any evidence in regard to what occurred or give any transaction there that is not in the record; we do not contradict; it is in addition to it—to carry it out; what I have just inquired of the witness is in that record; the senator put questions which are in that record, and I put questions to the witness that are to be found in that record—the answer to them; in that record it appears we proposed to go before Judge Balcom, and it appears that offer was rejected; that is my memory; I may be mistaken; the record will tell you if I am mistaken.

The PRESIDENT—The counsel will proceed.

Mr. MYGATT—I think the record will show we proposed to go before Judge Balcom; don't you find it so?

Mr. STANTON—I think not, sir; the proposition made by the respondent in the case, as I understand it, was, that the Senate was the only body that had any power to investigate his record.

Mr. MYGATT—The power of the board could be determined by Judge Balcom under that act.

Mr. STANTON—I think there was no record showing there was a proposition to go before Judge Balcom.

Mr. MYGATT—The statute says they shall apply to the Supreme Court if an officer refuses to render an account or produce papers; we assumed the surrogate could not be required to take from his office to another building, or anywhere else, the records without an order of the judge of the Supreme Court; that he was forbidden to do that, notwithstanding that the records are all in the next building, and the supervisors were invited to go into the office building and examine all those records.

Mr. PECKHAM—The protest is found at page 45, where the minority of the board of supervisors protested against the action of the board in assuming to claim that Judge Prindle should answer the questions asked him, and they placed their protest on the ground

that there is no way known to the Constitution or laws of the State by which a judge can be called to account, etc., by way of impeachment and corruption in office, signed by nine members of the board of supervisors. They then, as I understand it, withdrew and refused to have any thing further to do in the action of the board of supervisors upon this question; they finally came back and agreed to the resolution which is found on page 48, where the whole of these proceedings and the action of the judge in refusing to answer, etc., "ordered by the board that it be referred to the Senate at the next session thereto for such action as the Senate shall deem proper in accordance with their duty and the law."

Judge PRINDLE—There is a mistake in regard to that; they didn't come back and participate in the passage of that resolution.

Mr. MYGATT—I am told that what appears in this book of charges against Judge Prindle returns an imperfect record of those proceedings before the board of supervisors. I see now in the room one of the board of supervisors, and I understand that he has at his room a printed record; the authenticated record of the board of supervisors of last fall, which contains these proceedings as I state them to be; he will bring it in the morning, showing the facts to be as here asserted. We don't propose, therefore, to contradict this record but we propose to add to it, and show the facts as they occurred when Glover was present; it will show we proposed to go before Judge Balcom, and that that proposition was rejected; do you recollect that circumstance? A. I recollect the fact; yes, sir; that we urged them to take the proceedings provided for by that act of 1858, in order that there might be a decision by the judge of the Supreme Court upon the question of the authority of the board.

Q. Was the offer to the board rejected? A. They passed a resolution directing the chairman, if I recollect right, not to take the course provided for by the statute.

Q. At the time you examined these matters before the election referred to in that exhibit, was you then the counsel for Judge Prindle in any matters connected with this matter? A. No, sir; I had nothing to do with Judge Prindle, even as counsel, until the meeting of the board of supervisors, which was as late as the 20th of November or after, and that was in October—September or October—that that examination commenced.

The PRESIDENT—The Clerk will call another witness.

Mr. MYGATT—We are hardly ready to call more witnesses to-night; I am very much exhausted myself.

Senator D. P. Wood—I move the Senate do now adjourn.
The question was put and declared carried.
Adjourned until Thursday Morning, July 11, at 9 o'clock.

The Senate met at 9 A. M. Thursday, July 11, 1872.
The President—Mr. Prindle, are you ready to proceed?
Mr. E. H. Prindle—Mr. President, we are.

Dr. Thomas Dwight, a witness on behalf of the respondent, being duly sworn, testified as follows:

By Mr. E. H. Prindle:

Q. Where do you reside, doctor? A. In the town of Preston, Chenango county.

Q. Did you know Edward Murphy? I will state for the information of the Senate that this relates to the sixth charge. Did you know Edward Murphy in his life-time? A. Yes, sir.

Q. You are a physician? A. Yes, sir.

Q. Were you the family physician of Edward Murphy? A. I practiced as such.

Q. Were you named as executor in his will? A. I was.

Q. Did you draw the will? A. I did.

Q. Did you employ any one for the proof of the will? A. Yes, sir.

Q. Whom did you employ? A. Employed Mr. Ray.

Q. George W. Ray? A. Yes, sir.

Q. Were you present at the time the will was proved; on that day? A. I was.

Q. How long were you in the surrogate's office that day? A. Spent the day there.

Q. Previous to that time had you heard that John Murphy had made charges against you? A. Yes, sir.

Q. That you had put your name in the will without authority as executor? A. Yes, sir.

Q. Negotiations were had finally by which you renounced the executorship? A. After it was shown that I was executor; yes, sir.

Q. Certain commissions were paid to you; a certain bill paid to you? A. Yes, sir.

Q. How much was it? A. I charged them $50 for my services, what I had done in turning the matter over to him.

Q. In what room of the surrogate's office did you remain during the day? A. In the council room, right adjoining the open office.

Q. Back of the offices where the business was done? A. Yes, sir.

Q. Were you there in that back room all through the day? A. I was there from morning, about 10 o'clock, or a little before, until dinner time; I was directly back after dinner, and was there until the proof was called out.

Q. Until the business was closed up? A. I was there until the proof was called on.

Q. Did John Murphy pay Judge Prindle any money in the back room that day to your knowledge? A. Not while I was there; if he did he must have done it while I was gone to dinner; he was not in the room while I was there.

Q. Didn't John Murphy and the Murphy heirs leave before you did? A. I would not be able to swear certain whether or not they were all gone or not; some of them were gone; I couldn't say certain whether or not they were all gone.

Q. Could you say whether John Murphy was gone? A. I don't think I could, positively.

Q. Have you any recollection as to whether he was or not? A. No, sir.

Q. What is your impression, if you have any? A. It seems to me they were mostly gone; and I couldn't say whether he might have possibly been there or not; I think the office was pretty much vacated.

Q. Wasn't the understanding that John Murphy was to pay all expenses and charges? A. When the question was raised to me about turning over, getting into the estate, I stated to him that I would, under certain circumstances, and made those statements to them which included the charges.

Cross-examination by Mr. STANTON:

Q. I didn't understand what the witness said last? A. I said I turned over the matter to him, afterward stating to him as for the charges.

Q. Stating to him what you charged him? A. Stating I would on his paying the services.

Q. Were you ever paid the $50 that you say you charged? A. Yes, sir.

Q. Who paid it to you? A. John Murphy.

Q. And took your receipt for it? A. Yes, sir.

Q. Did he pay you any thing else at the same time that he paid you that $50? A. Yes, sir.

Q. How much did he pay you altogether? A. Some $75 or thereabouts.

Q. Gave a receipt for $75 to him? A. Seventy-five dollars, more or less; it couldn't vary much from that.

Q. Where was that $75 paid to you? A. At my house, in the town of Preston; the receipt is dated there.

Q. You don't claim to have been present all the while that John Murphy was in the office of the surrogate on that day? A. I was, except what time I was gone to dinner.

Q. Do you know you were present at all, I mean when John Murphy and Judge Prindle were present in the office? A. I know they were not in the office much.

Q. Can you swear that you were present all the time when John Murphy and Judge Prindle were in the surrogate's office that day? A. I can swear I was there from before 10 o'clock in the morning until after 12.

Q. Answer my question? A. Yes; I answered that except the time they may have been in the office while I was gone to dinner; that is the time they may have been in the office which I wouldn't know any thing about.

Q. Who was there with John Murphy; was his sister, Margaret Murphy, there? A. Not until about 4 o'clock in the afternoon; she was there at that time.

Q. Did you see her when she went away? A. I couldn't say.

Q. Did you see John Murphy when he went away? A. I think the room was pretty well vacated when I left.

Q. Can you tell who was present in the office when you left it? A. George W. Ray was present; I couldn't say whether Mr. Berry was or was not.

Q. Who else? A. I can't name any other individual.

Q. Can you tell whether any of the Murphy children were present? A. I cannot.

Q. You can't say? A. No, sir.

Q. Can't you tell whether John Murphy was present? A. I can't tell whether any of them were.

Q. John Murphy might have remained there after you went away? A. I can't say.

Q. So far as you know? A. I can't say that he did; I can't say

that I saw him go away; all I can say is the room was pretty much vacated.

Q. There may have been interviews between John Murphy and Judge Prindle later in the day than dinner time? A. It might have been after I left the office.

Q. Did you stay in the back room of the judge's office all the while you were there? A. I was in the back room most of the time.

Q. Were you not in the front room a portion of the time? A. I was.

Q. Didn't you go out from the time you first went in until dinner time? A. I didn't leave the office.

Q. You were in different rooms of the office? A. There were but two rooms of the office.

Q. And you were a part of the time in the front room and a part of the time in the back room? A. Yes, sir; my time was principally in the back room.

Q. Judge Prindle never paid you a dollar? A. No, sir.

Q. You say after it was determined you were executor you agreed to let John Murphy have possession for the sum of $50? A. I did.

Q. Where was that arrangement made? A. In the surrogate's office.

Q. Was it made in the presence of Judge Prindle? A. Made in the presence of Judge Prindle.

Q. At what stage of the proceedings was this arrangement made? A. After the close of the testimony in regard to the proof of the will.

Q. After the proof of the will, had letters been issued to you? A. Yes, sir.

Q. Letters testamentary had been issued to you when this arrangement was made? A. Proof of the will and citations.

Q. Had letters testamentary been issued to you as executor at the time this arrangement was made? A. Let me understand by letters testamentary; I want to be understood correctly; I may be mistaken in regard to letters testamentary; I applied for proof of the will and got papers for the citations; there were no papers issued to me after the testimony closed, because after the testimony closed, the question was raised by some friend of Murphy's to know whether the matter could not be transferred from my hands to Murphy, for the settlement of the estate; I asked the question, are any more witnesses to be presented there, and I think that I had none; only the witnesses to the will; then I asked for a decision, whether it was decided; he

said it was, and then I told him I was at liberty to talk; that I could answer his question.

Q. When did you first learn that there was a desire on the part of John Murphy for your removal, and that you should renounce, and that he might have letters issued to him instead? A. It was some weeks prior; some two weeks or more prior to the proof of the will.

Q. From whom did you learn that fact? A. I want to state one point.

Q. Answer my question first? A. Let me state it if you will; I don't say that I learned that he wanted to get the business in his hands; I learned this fact, that he had made intimations, innuendoes, and expressions, stating that I had foisted my name in the will as executor.

Q. I don't ask that; from whom did you first learn the fact that he desired to take your place? A. It came in among the expressions in regard to my having foisted my name in the will as executor.

Q. State who you learned it from? A. I can't say positively; I should say it was from Alfred Daniels, as near as my memory serves me; that John wanted it changed and to handle it himself.

Q. When was the first talk you had with Judge Prindle in reference to that matter? A. The day the will was proved.

Q. What time of the day? A. The latter part of the day.

Q. After the will was proved? A. No, sir.

Q. Before? A. Yes; before the will was proved he came in the back room where I was sitting.

Q. Who came in? A. Judge Prindle, and he asked me if I knew what charges were out against him in regard to this will, and I said I supposed I did.

Q. What further was said? A. At that time there was nothing further said; only called witnesses to prove the will.

Q. Was there any thing said as to whether or not you were willing to renounce? A. No, sir.

Q. Who was present at that time? A. Geo. W. Ray and Horace G. Prindle.

Q. Anybody else? A. There was nobody in that room at that time save them and myself.

Q. That was in the back office? A. Yes, sir.

Q. Previous to that time had you had any conversation with Judge Prindle in reference to your executorship of this will? A. Not a word.

Q. Who did you see when you went to make the application for proof of the will? A. Judge Prindle and Mr. Ray.

Q. Anybody else? A. I don't know who else might have been there.

Q. Who did you first speak to in reference to the transaction of that business? A. Geo. W. Ray.

Q. He was the first man? A. I couldn't swear positively whether I spoke to him first or whether I spoke in general terms of it before him and the judge, that I came to get papers for the proof or the will of Murphy; I cannot say that I spoke to one or the other on the first start; I think, more than otherwise, that I spoke in general language before them both.

Q. Were you present at the time the $75 was paid? A. What $75?

Q. The $75 by John Murphy to Ray? A. I didn't see any such payment.

Q. Can you tell whether there was any such payment made? A. No, sir; not to my own knowledge.

Q. Did you see any money paid in the office of Judge Prindle that day? A. Not a dollar.

Q. Did you hear any talk about the payment of any money? A. No, sir.

Q. When was it that you set your price, $50, for renouncing as executor? A. After the close of the testimony; after he had executed to me the papers for the carrying out of the will:

Q. After who had executed the papers? A. Mr. Murphy.

Q. What papers were these? A. I took a bond of him, requiring him to carry out completely the will as it was written.

Q. You took a bond of him? A. Yes, sir.

Q. Who drew that? A George W. Ray.

Q. It was after the drawing of that paper that the $50 was talked about? A. Yes, sir; it was talked about; he wanted to know what I was charging; I told him.

Q. Did he tell you when he would pay it? A. No.

Q. Any arrangement made about the time of payment? A. No, sir.

Re-direct examination by Mr. E. H. PRINDLE:

Q. How long have you lived in the same town with John Murphy? A. Not in the same town with him; he did at one time live in our town.

Q. How long have you known him? A. Thirty-five years; from his boyhood up.

Q. What kind of a man is he.

Mr. PECKHAM—What do you mean by that?

Mr. E. H. PRINDLE—I mean what I ask.

Mr. PECKHAM—I object to it; that is not the proper inquiry.

Mr. E. H. PRINDLE—If you object to the question, I will let it pass.

By Mr. STANTON:

Q. You took a very active interest in the campaign last fall? A. No, sir.

Q. Didn't? A. Not a very active interest.

Q You have been a strong friend of the judge's all the while? A. I am a friend of the judge's.

By Senator TIEMANN:

Q. I understand you to say that you drew up that will or procured the drawing of it up? A. I drew it; I drew the will myself.

Q. Was your name put in at the request of Mr. Murphy? A. The testator.

Q. Was your name put in as executor at the request of Mr. Murphy? A. Yes, sir.

By Mr. MYGATT:

Q. You mean the deceased Murphy? A. The deceased Murphy; that was the very point this young man has made some noise over.

D. L. ATKINS, being duly sworn on behalf of the respondent, testified as follows:

By Mr. E. H. PRINDLE:

Q. Where do you reside? A. Sherburne, Chenango county.

Q. What is your business? A. Lawyer.

Mr. PRINDLE—This is in regard to the Loomis estate; the 30th charge.

Q. Do you know Dr. E. Darwin Hayward, of Columbus? A. Yes, sir.

Q. Go on and state what you had to do with the proof of the will of Isaiah Loomis; he was one of the executors? A. Yes, sir, I think sole executor.

Q. What do you know in regard to that? A. I had nothing to do with Dr. Hayward; I was retained by Charles Loomis, who was the son of the deceased, and whether a legatee in the will I don't know, to take the necessary steps to prove the will; the heirs, which were eight in number, I think, were scattered considerable;

two in Chicago, one at a certain point in Iowa; I forget where; one at Cazenovia or Canastota, N. Y.; I made the application by petition; petition of Charles Loomis; and sent it to the surrogate's office, I think, by mail; received back by mail, in pursuance of my request, a citation and eight blanks to fill out, I think, for the eight heirs to be cited; the estate was to be settled amicably; there was no contest, and we served upon the heirs by mailing, and getting back from them an admission of service, authorizing me to appear for them; when the first return day of the citation came there were two or three of them in the west who hadn't returned the citation, or any admission of service; we went down to the surrogate's office and appeared and the matter was put over and new citations issued for those; upon that occasion I spoke to Mr. Ray and said to him that it might be doubtful; we had adjourned, I think, some eight or ten days; that it might be possible that we would not get a return of the citations by that time, and if we did not, I didn't want to come down; the way the railroad was running it would take nearly all day to come down and go back the same day; that he should appear for me and attend to the matter; Mr. Ray did appear in the matter and took thirty or forty cents' worth of affidavits as a notary public; drew some papers; I think proof of service; I recollect see his writing, and on the final return day, which was after one or two adjournments—I can't tell how many—he appeared and conducted the proceedings; I did not go down; the executor and the witnesses to the will went; after the business was completed, Mr. Charles Loomis paid me; I charged him upon the book; I had nothing to do with Dr. Hayward; I have examined my book as to this and find that my bill was $32; that is, for what I did in the matter; when Mr. Loomis paid me he paid me $22.50, I think it was; it is my impression I spoke to him in reference to Mr. Ray; I will not say that I did; but I took some eight or ten dollars less than the itemized amount of my bill, as appears upon my book.

Q. Mr. Loomis was the one who petitioned for the proof, and not Dr. Hayward? A. Yes, sir; he was one of the heirs, and I presume a legatee; I don't remember.

Cross-examination by Mr. STANTON:

Q. I understand that you procured all the citations to be served? A. Yes, sir.

Q. Mr. Ray had nothing to do with them? A. Nothing, except

that upon one occasion he procured them to be sent to me; sent the citations to me by mail.

Q. Sent the citations upon the first application? A. I believe he did upon the second, also.

Q. Where was Mr. Ray's office at that time? A. It was in the same room with the surrogate's, I believe.

Q. Do you know whether he was performing at that time the duties of surrogate's clerk? A. I do not, sir.

Q. Did you see him engaged in performing those duties? A. I frequently saw him engaged in writing in the books and papers that apparently pertained to the surrogate's court.

Q. You saw him writing up the records of the office, did you not? A. I should think they were.

Q. You have been in the office a great deal? A. Considerable.

Q. Now, sir, have you found him in that office nearly every time you have been in there, at work upon the records of the surrogate's office, or performing the duties of surrogate's clerk? A. Very often, sir.

Q. Well, nearly every time that you have been there previous to January last? A. Perhaps, I couldn't say just that, but very often.

Q. You have examined the records of the office somewhat, have you not? A. I think not; I was down on one occasion when other gentlemen were making an examination; I didn't examine particularly.

Q. Did you notice in whose handwriting these records were? A. No, sir.

Q. Now tell me, if you please, what Mr. Ray had to do in reference to this matter after the citations were served and returned? A. My recollection is that he drew one or more affidavits of service, perhaps not but one.

Q. Service of what? A. Of the citations.

Q. You think one affidavit? A. Yes, sir, or some affidavits; I can't recollect what they were, but I knew the affidavits that he took in the matter amounted to thirty or forty cents.

Q. Affidavits that he took as notary public? A. Yes, sir.

Q. Were not these same affidavits proper to be made before the surrogate himself? A. Well, I suppose they could have been made before him; I don't know.

Q. They could have been made as a part of the proceedings? A. I presume so; and he appeared upon the probate of the will.

Q. Was there any contest upon the probate of the will? A. No, sir; and I think he drew a copy of the will; I don't know.

Q. Did you ask him particularly to draw a copy of the will? A. No, sir; simply to appear for me on the return of the citations, if I was not there; Mr. Ray and myself were always intimate, being brought up together.

Q. You say that you deducted from the amount of your bill that you made out about $10? A. I say I took that less.

Q. Do you say that you mentioned to Mr. Loomis, who employed you, that you had employed Mr. Ray in the matter also? A. Mr. Loomis knew it; I don't say that I called his attention to any deduction from my bill on that account; but I don't see how I would have made it otherwise.

Q. Do you know whether Mr. Loomis paid Ray any thing? A. I don't know; I understand that he did.

Q. How much did you understand that he paid him? A. I will correct myself by saying that Mr. Hayward paid, and not Mr. Loomis; I didn't understand that Mr. Loomis paid any thing.

Q. Now, sir, did you employ Mr. Ray as attorney in that proceeding; was that the object of your employment? A. I so regarded it.

Q. You thought you required assistance in the matter? A. I thought it would be cheaper for my client than for me to come down and charge him $10.

Re-direct examination by Mr. E. H. PRINDLE:

Q. Isn't it usual when lawyers appear on the probate of a will to make some charge for it? A. I always do.

Q. And so far as you know, others always do? A. Yes, sir.

Mr. E. H. PRINDLE — I will call the attention of the counsel to the fact that the papers embraced in the resolution adopted by the Senate are now here.

Mr. STANTON — We would state in reference to that, that we would like an opportunity to examine them. We will designate a couple of gentlemen who will make an examination, which will save the time of the Senate in the introduction of proof.

Mr. E. H. PRINDLE — As near as I could understand the order, it was that the papers should be produced, but without saying where; they are here subject to the order of the Senate.

Mr. STANTON — We certainly do not wish to lumber up this case by introducing a large mass of documentary evidence; we had supposed that the evidence could be introduced in the same manner

that other evidence on the subject has been introduced; by having the papers examined and the witnesses simply stating the number, etc.; they might be taken into one of the back rooms here and a couple of gentlemen allowed to examine them.

Mr. E. H. PRINDLE — You can take your own course in regard to it.

JAMES G. THOMPSON recalled.

By Mr. E. H. PRINDLE:

Q. You have already testified that you are the county clerk of Chenango county? A. Yes, sir.

Q. What is the first thing that you remember having to do with this Smithville matter on the 24th of December? A. Well, I don't recall any thing that happened in the forenoon until very nearly noon; I think Mr. Tarbell, one of the men appointed (I knew nothing about the appointment at that time), came down to the surrogate's office and the commissioners had not signed the oath of office; they desired me to administer the oath of office to them; I did so; they handed it to me; I took it down to the clerk's office and filed it there.

Q. Now I want to call your attention to this oath of office; in whose handwriting was that oath of office drawn? A. It was in the handwriting of Captain Tilton, law partner of Isaac S. Newton, with the exception that it had evidently been drawn beforehand, and a blank left for the names of commissioners, and also for the date of the money; aside from that it was in the handwriting of Mr. Tilton.

Q. Who administered the oath of office? A. I did.

Q. These commissioners' names were put in that day? A. Yes, sir.

Q. Well, go on and state what further you had to do with it? A. I took it down to the county clerk's office and filed it there.

Q. What did you do in connection with the registering of the bonds? A. Some time in the afternoon, I can't state the hour, but it was certainly after I came back from dinner, probably two o'clock or later, some one of the commissioners, or two or three of them, came in; I can't specify which one brought them; they all came in together; brought the bonds there and desired to have them registered; and I know I heard at the time that an order was made bonding the town; I had heard it in the morning; I don't know who told me; the blank bonds were produced; they had been signed by

the commissioners, and the name of Mr. Rhodes appeared in each coupon; I took a memorandum of the date and number of each bond and the amount; I then signed each bond, and Mr. Rhodes or Mr. Tarbell, as I signed them, took them off and laid them on the table to dry; Mr. Merrifield, my principal clerk, took them in the back office and sealed them; they were brought in in little packages, five or six, or eight or ten at a time from the outside; I don't know where; sometimes we would have to wait for them to come in; I could sign them faster than they came in.

Q. How late did you work that day? A. This was in the winter, and it was after gas-light before we got through with the bonds.

Q. The affidavit of David L. Follett, a certified copy of which has been introduced in evidence, was taken before you, was it not? A. It was; that was taken before me at the December circuit, in the court-house, I think.

Q. The affidavit mentions that "the bond is hereto attached," or something of that kind; will you state how it was in regard to that? A. Mr. Follett asked me if I would get one of these bonds; there were only two kinds of bonds at that time—$100 bond and the $500 bond; samples of each had been left with me; they were canceled by slashing across the coupons where the signatures were to be with a knife; I had these in the office; I took one of them up to the court-house—I can't say which one—and Mr. Follett used that as "the bond hereto attached"; it never was attached, but considered attached.

Q. He had the bonds himself? A. Yes, sir.

Q. Looked at it? A. I suppose he did; he had it open there on the table; I can't tell which one he took; I have both of them here [producing two bonds]; I think it was the $500 bond.

Q. Is the name of any commissioner printed or engraved on that bond anywhere, in any way, shape or manner? A. It is not.

Q. Or any signature whatever? A. No, sir; the cutting of the bond was done for the purpose of preventing its being used; I will state when they were first brought there the corner coupon was on; they cut out that coupon that came due first, and then wrote a coupon up in the corner of the coupon itself.

Q. There never was any name signed to either of these bonds at all? A. No, sir.

Q. The clipping with a knife was simply to prevent their being issued? A. Yes, sir; I suppose so; it was so when they gave them to me on the 24th of December; I have had them in my possession ever since.

By Mr. MYGATT:

Q. The issue of bonds was $100 and $500 bonds and no other issues? A. No other issue.

Mr. E. H. PRINDLE—We offer these bonds in evidence.

Mr. STANTON—We ask for what purpose you offer them; you have already proved that there is no name printed or written in those bonds.

Mr. E. H. PRINDLE—All I desire is that the principal facts appear in the record; it is already in evidence that one of these bonds is the one that was considered attached to the affidavit by Mr. Follett, and that neither of them have any names upon them, either printed or written.

Q. Do you remember the circumstances of the judge coming in and leaving the judgment roll? A. I do.

Q. At what time of day should you say that was? A. I couldn't tell what time; it was about the middle of the afternoon; I was at work at the desk; Mr. Follett came into the office; picked up one of the bonds and made some joking remark about it—"you are coining money," or something like that.

Mr. PECKHAM—Never mind what Mr. Follett said.

The WITNESS—While there Judge Prindle came in and laid the judgment roll on the desk.

By Mr. E. H. PRINDLE:

Q. You didn't file it at that time? A. No, sir; it had already been filed.

Q. Who was it filed by? A. Mr. Merrifield filed it; at least he said he did; I did not see him do it.

Q. Your deputy? A. He was not at that time; he was principal clerk in the office at that time.

Cross-examination by Mr. STANTON:

Q. Mr. Thompson, do you know whether that judgment roll was filed previous to that time or not? A. I couldn't say that I actually looked at the filing of the paper; I knew it just as much as I knew any thing that I did not see myself.

Q. Then you cannot swear positively that the judgment roll was filed previous to the time when Judge Prindle came in when you and Mr. Follett were there? A. Only from what I understood.

Q. Up to that time, or rather up to the time that this bond came into your office to be registered, you didn't know that the judge had decided to bond the town of Smithville, did you? A. I did; I had heard it talked around the office in the forenoon; along about

noon; a little before noon; and they came after me to go up to the surrogate's office.

Q. Who asked you to go to the judge's office? A. My impression is that it was Mr. Charles P. Tarbell.

Q. One of the commissioners? A. Yes, sir.

Q. Can you tell about what time in the day that was? A. That was probably about twelve o'clock; before I went to dinner, I know.

Q. If I understood you correctly upon your former examination you stated that one of the commissioners came into your office with some of the bonds, and that you asked him if the judge had decided to bond the town of Smithville? A. I don't know that I asked him; says I, "decision is made, then?" or something of that kind, or "decision is made then, is it?"

Q. You did not know previously that decision had been made to bond the town of Smithville? A. I knew it had only from the fact that I understood it had; and I went up stairs and took the oath of office of the commissioners to it.

Q. Where did you get your understanding from? A. I can't tell.

Q. Had you ever seen that judgment roll in the office previous to the time Judge Prindle brought it in? A. I can't answer whether I had or not; I can't answer positively whether I saw Judge Prindle come in and carry the judgment roll up stairs, or whether I got my knowledge from what I understood at the time.

Q. You administered the oath of office to these commissioners, did you? A. Yes, sir.

Q. Where did you do that? A. At the county judge's office.

Q. Who was present at the time that oath of office was administered in the county judge's office? A. There were several persons in there; I cannot tell who they were besides the commissioners; Judge Prindle was there, the commissioners themselves, and two or three other persons in the office.

Q. Was there anybody in the office at that time except those who were particularly interested in favor of bonding the town of Smithville? A. I cannot answer; I don't know.

Q. You are acquainted with all the parties, are you not, and about all the men in the county? A. Well, 'most everybody.

Q. Can you name any party who was in there interested adversely to the bonding of the town of Smithville? A. I cannot, sir.

Q. Can you tell about the time of day it was that Judge Prindle came in there and brought that judgment roll and laid it upon your

desk? A. I should say it was between two and three o'clock, to the best of my recollection.

Q. Now, sir, one of these bonds that you have produced here is the one that was attached to the affidavit that Mr. Follett made? A. One of them was considered attached.

Q. Did either of these bonds ever have any names in them, either written, printed or otherwise? A. I have no idea that they ever had.

Q. These bonds that you were registering in your office at the time Mr. Follett came in there had names in them, had they not? A. Yes, sir; they had the names of the commissioners written at the end.

Q. Both on the coupon and on the main bond? A. No, sir; the name of one of the commissioners on the coupons and the names of all three on the main bond.

Q. That is, in that bond which was attached to the affidavit of Mr. Follett, the signatures of the commissioners did not appear, either printed or written? A. Well, you have the paper before you.

Q. This Mr. Tilton that you speak of, who drew this affidavit, is a partner of Mr. Newton? A. Yes, sir.

Q. And they were the attorneys employed in behalf of the parties who desired to bond the town, were they not? A. I understand so; by common repute they are.

GEORGE W. RAY, a witness called in behalf of the respondent, having been duly sworn, testified as follows:

By Mr. E. H. PRINDLE:

Q. Where do you reside, Mr. Ray? A. Village of Norwich, Chenango county.

Q. What is your business? A. I am an attorney and counselor at law.

Q. About what time did you comence reading law? A. I commenced the 27th of March, 1866.

Q. With whom? A. With Mr. E. H. Prindle, yourself.

Q. At what time were you admitted? A. It was after the 20th of November, 1867; between the 20th and 25th, I think.

Q. I had my office at the time you read law in the same office with the surrogate? A. Yes, sir; there were two rooms in the surrogate's office, and I always understood that your office was more particularly for your private business in one room and the surrogate's

office in the other; that is, none of the records of the surrogate's office or any thing pertaining to the surrogate's office, was ever kept in the back office; that was the office I was in mostly; that was the room I was in mostly.

Q. That was the room where you had your desk and occupied mostly? A. Yes, sir.

Q. After you were admitted you remained in that office? A. I did, sir.

Q. Do you recollect that I attended the constitutional convention, and was not at home during the year commencing in the spring of 1867? A. I do; I remember you were here in Albany nearly all the time.

Q. And that subsequent to that, when I went home, I went into partnership with S. S. Merritt, now deceased? A. I remember it, sir.

Q. Soon after you were admitted, will you state what you did in reference to business; what notice you gave as to where your office was, etc.? A. After I was admitted I spoke about going away; Judge Prindle told me that I could remain there; that it would be a convenience to the public to have an attorney there at the surrogate's office, and that, if I desired to, I could remain there; I could stay there; all that I ever did in regard to the business connected with the surrogate's office was this: when people came there to have business transacted, and the papers were not drawn, I almost always — not always, but almost always — would draw their papers, and enter the orders in the books, and pass the books to Judge Prindle, who would sign the orders in the books; and in regard to the business that was done when Judge Prindle was away I never did business in his absence, except he would be gone two or three days, and he would then say to me, "if any one comes here with their papers drawn, and want letters of administration, or letters of guardianship, or want citations to prove wills, I have left them signed, and you can let them have the citations, or the letters of administration, and put the return day on some days that I have marked in my book;" Judge Prindle always had, in a certain book that he kept, certain days put down for the proof of wills; and if a man came during his absence when he was to be away any length of time I would give them a citation that was left signed by Judge Prindle, and put the return day on one of those days marked in the book, and when he came I would give the papers to him; that was a practice that I had with some attorneys; give them the citations signed, and let them take them home, and say to them, "when you

have a case, put in the day in your papers, and it will be all right." I never issued any letters of guardianship or administration, or any citations when Judge Prindle was in the village without going to him or seeing him; sometimes he would say to me, "I can't go to the office, and you may go back and let them have their citations;" during the time that I was in the office after I was admitted, Judge Prindle had several students at various times; he never had a good writer: he never had a student who was a good penman until Mr. Thomas came into the office in the spring of 1870, I think it was; these students that he had, Judge Prindle used to have record the wills, but they would make such bungling work, and Judge Prindle had a good deal of pride about it, and I saw it worried him, and whenever I had time and he had any work that was to be nicely done, I would take hold and help about the recording of wills, etc.

Q. Did you ever have any agreement whatever with Judge Prindle, that you was to do any work for him; any of this clerical work? A. No, sir, I never had any agreement, or a word of conversation with him; there was not even an understanding that I was to do it; he told me I could stay in the office; that it would be a convenience to the parties to have an attorney there.

Q. Will you state what you did in regard to advertising yourself as an attorney there in the surrogate's office? A. I advertised in each of the leading county papers, in the Chenango *Telegraph*, and in the Chenango *Union;* I have one of the papers which contains my advertisement.

Q. Will you read it? A. I have a card there which I would like to read; my advertisement that I published in both of the papers (in one it reads Geo. W. Ray, and in the other G. W. Ray); reads like this (reading from Chenango *Telegraph*): "Geo. W. Ray, attorney and counselor at law, Norwich, New York. Office over county clerk's office. Special attention given to proceedings in surrogate's court, proof of wills, settlement of estates, etc. I also had at the entrance of the surrogate's office a large sign reading, "G. W. Ray, attorney and counselor at law," or "G. W. Ray, law office," I think it reads—

By Senator D. P. Wood:

Q. Give the date of the paper? A. October 18, 1871; I put that advertisement in the paper soon after I was admitted; at the same time I had several hundred of these cards, one of which I now produce, which reads the same as the advertisement; I think I had over a thousand.

By Mr. E. H. PRINDLE:

Q. What is the date of the notice, if it is dated? A. Nineteenth February, 1868.

By Mr. MYGATT:

Q. Does the paper indicate when the first publication was? A. It was soon after I was admitted, I know; Mr. Berry could tell as to that; I think he is here; that notice continued in the paper until I left the surrogate's office; I stopped doing any kind of business in the surrogate's office, or making it my office, in fact, as early as August, last year, when the first question was raised in regard to the matter; about the time of the political convention, I think, I stopped making that my office; that is, what business I had I did there, and some other little jobs, but did not go there any more than was necessary to show papers and things of that kind.

Q. When the question was raised as to your right to do business there, you ceased? A. Yes, sir; only to close up some matters I had on hand.

Q. Have you had your office there since the 1st of January? A. No, sir.

Q. Or done any business there, except as an attorney? A. No, sir, except as an attorney going there from my office where I am now located.

Q. Has there been any attorney in the office during the present term? A. No, sir; not making that his office or stopping there.

Q. Do you know who was appointed clerk? A. Yes, sir; George Thomas.

Q. He is not a lawyer? A. No, sir.

Q. You understand that nothing since then has been charged for the papers drawn in the office? A. I understand nothing.

Senator BENEDICT — Since when?

Mr. E. H. PRINDLE — Since the 1st of January, and before that in fact; new arrangement and new appointment all around.

The WITNESS — I would like to say that from the time I had this card first published, and during the first year of my being in the office, there was hardly a man in the surrogate's office with whom I did any business but what, when I put his papers up, I put one of these cards in his papers, and he took it home with him.

Q. I want to ask you if you have ever looked over to see the amount of money that you got in a year there for surrogate's business? A. Yes, sir.

Q. State it? A. If you will give me that paper I had I can tell you.

Q. (Handing witness paper.) This newspaper? A. Yes, sir; I have figured up for other years, and I have figured it for this year specially, relating to the year 1871; this paper was published the 18th October, 1871; it was within a day or two of that time that I figured this up; in the year 1871, thirty-two (32) wills were proved in the surrogate's office; I drew the papers in ten of those cases; in all the other cases it was done by other attorneys; for my services and the disbursements in proving these ten wills I charged $233; that included all disbursements; at that time only a part of it had been paid; most of it has been paid since; of this amount $69.30 was for disbursements; that is the amount I paid out, leaving $164.70 which I charged for my services in the ten cases, or $16.47 on an average in each case; some of those estates, for proving the will, I did not charge but $5, and some of them, perhaps, I charged $25; it depended upon the amount of work and counseling I did; the value of those estates was $45,000, as shown by the sworn petitions; letters of administration were issued upon thirty-three estates during that time, and I drew the papers in ten of those cases and charged $66 in all; the stamps and disbursements were $28.50, leaving $37.50 for my services, being an average of $3.75 in each case; some of them I charged three times that, and there are one or two cases where I did not charge any thing, as the estate was very small and I thought that I could better afford to do it for nothing than to charge any thing; in the other twenty-three cases the papers were drawn by other attorneys; in regard to the final settlements I would say that during that time, twenty-four estates were finally settled; I acted as the attorney in the final settlement of nine of them; other attorneys acted in the other cases; I charged for my services in the settlement of those estates $140, averaging $15.55 in each case; in two of the other fifteen cases the administrator was an attorney (Mr. Newton), and he drew his own papers and account, and he charged it in his commission; the attorney charged in the final settlement of the other cases $489, being an average of $37.61 in each case; during that year up to that time I acted as special guardian in some cases and received $35 for being special guardian; I received $6 for drawing guardian papers; I had received up to that time $373.20 for my services, and at this rate through the year it would amount to $466.50.

Q. Averaging it at that rate through the year would you have received $500? A. No, sir.

Q. [illegible] A. I did not receive as much [illegible] there was an [illegible] Mr. [illegible] came to [illegible] Judge Prindle [illegible] him he [illegible] thought [illegible] paid [illegible] $[illegible] [illegible] excep- [illegible]

Q. [illegible] the Barrows estate? A. The [illegible] W. Barrows estate?

Q. Yes, sir.

Senator [illegible]—What charge does that come under?

Mr. [illegible]—[illegible] charge.

A. I can remember that Mr. Barrows came to the surrogate's office and made application to prove the will; I drew his petition and I didn't make out the citations at that time for some reason or other; it was in a hurry and Judge Prindle told him that he would have the citations sent; I can remember that fact; I can remember that, at Judge Prindle's request, I mailed him the citations; I can remember that, at Judge Prindle's request, I mailed them to him, all made out for service; Mr. Barrows at that time swore that the value of the estate, I think, was $1,000; at any rate, he swore it at a sum so that there was no publication fee charged at that time; the only fees for publication were twenty cents; I drew all the papers for the proof of the will; during the time that the application was made to prove the will and the time that the will was proved Mr. Barrows came down again; I mailed all the citations; there were heirs scattered in different States and in several places in this State, and there was one in Cæsarea, in Turkey; Mr. Barrows came down to see about the will; there was some question raised over it when he was there first; he was told by me that there was no authority in the will to sell the real estate and he asked me what proceeding was to be taken; I told him it would have to be a suit in the Supreme Court; Mr. Barrows suggested to me something about bringing the suit and I told him that I was a young lawyer, and for me to bring that suit I didn't know that I should get the papers right, and that he had better get some older lawyer to do it, and that Judge Prindle was an attorney of the Supreme Court, and could just as well do it as not.

Q. Did you know any thing about the law in regard to his practicing? A. I did not know it, but I presume I had read it; Judge Prindle did bring the suit and pursued it to judgment: I drew all the papers of the proof of the will; I made a charge at that time,

and I think it was somewhere in the neighborhood of $20 that I charged him for services on the proof of the will and the disbursements I incurred, postage, etc.; Mr. Barrows subsequently came and I published notice to creditors; I acted as his counsel all through; he came down to see about the final settlement and I drew his petition and obtained proof of service of the citations; it was then published in the State paper, and there was a publication fee which I paid; it was also published in the county paper, and there was a publication fee which I paid; it was included in my charge; on the final settlement Mr. Barrows was there, in connection with that estate, I think eight times; the final accounting will show; I think it was eight times and I don't know but it was more; when we got all through I charged him $50; in setting it down in the account I put down $50, but when I came to add it up and get the aggregate, I found it made more than the amount of the estate was; it has been stated that the amount of the estate was $1,000; the estate was from $2,000 to $3,000, and I think $3,100 or $3,200; Mr. Barrows said that we had got our fees in the suit; I would like to state right here that Mr. Barrows had two personal claims against the estate, and he brought the witnesses down and I attended to the establishment of those claims before the surrogate; I crossed out my bill of $50 and figured just what the balance was, $37 and some cents; I put that in as the amount paid me for my services and disbursements, being $37 and I think fifty-seven cents; Judge Prindle told me that he would make it all right with me; that he could pay me amply for my services in that matter out of the money that he got in the suit in the Supreme Court; Mr. Barrows did not pay me more than $37.50; the balance to make up the $50 was paid me by Judge Prindle, and he paid me too; that is all I can remember in regard to that estate.

Q. You appeared as attorney for the defendants in the suit in the Supreme Court? A. Yes, sir, for each and every one of them.

Q. How much did Judge Prindle pay? A. $25.

Q. How much in the suit? A. $75 for my services as attorney for the defendants in the suit.

Q. Who applied to prove the will of Edward Murphy? A. Dr. Dwight.

Q. State what you did? A. Dr. Dwight came there to the office and he knew I was an attorney and practicing as such, because I was acquainted with him and his cousins and relatives very well; he told me that he had the will that he wanted proved; I drew the

petitions and citations and he served them; within two or three days after that John Murphy came to the office.

Mr. E. H. PRINDLE here handed the witness several papers.

WITNESS — I would here say that I hold in my hand the final account of the executors of the will of Anna W. Barrows; there is the petition for the proof of the will and there is the petition for the final settlement.

Mr. E. H. PRINDLE — I would like to have these considered in evidence and marked; I do not care to have them in the record to lumber it up.

The same are here marked for identification, C. R. D.

Q. All in your handwriting? A. Yes, I think they are; if there is any thing that is not, I think it was done by some clerk in the office under my direction; there might have been some student there whom I told how; I think not, however.

Q. Go on and state now in regard to Mr. Murphy's coming down? A. He came to the office, and my memory is that Judge Prindle, at that time, was not in; Mr. Murphy came there and was in a very excited state, and wanted to see the surrogate; wanted to know where he was; I can't tell you what I told him, but I sent him off somewhere after the surrogate; he came back in a short time with the surrogate, and Judge Prindle asked me if I had the will; I told him that I had; I got the will and produced it; Judge Prindle took it and looked it over in my presence, with Mr. Murphy, and Mr. Murphy told Judge Prindle that he was the executor who should have been named in the will; that his father promised it, and that his father told the witness that he was the executor, and that the witness would swear to it, and if Dr. Dwight's name was in there as executor that Mr. Dwight had forged his name in there himself; Judge Prindle looked over the will, and he found in the will that the place where the executor's name — I should say that he further charged that the amount of a certain legacy (I think to Margaret Murphy) was put in differently from what his father desired and asked it to be put in. Judge Prindle looked through the will and he found that there was something appearing on the face of the will that might substantiate it, and he told Murphy that he saw that the amount of the legacy was put in with a different ink, and a different pen, and at a different time, and that the name of the executor was that same way, and Mr. Murphy said that he would fight the will if it took the last dollar he had; that Mr. Dwight never should administer that estate, or have any thing to do with it; he said that

he should get a lawyer to do it; he wanted to take the will and show it to a lawyer; I let him take the will, and he went out somewhere to show it to a lawyer, and came back, and I suggested to him that Dr. Dwight was not a man who would do any thing of that kind; that his reputation was spotless, but he would listen to nothing, and said he should fight the will; I immediately sat down and wrote a letter to Mr. Dwight, informing him of the facts, and Mr. Dwight came down and talked with me in regard to the matter; within a day or two I was going to Otselic, and I saw Dr. Dwight in regard to the matter, and I stopped and talked with Mr. Berry, who was one of the witnesses, and he informed me there was nothing of the kind about it; after I got back home Mr. Murphy came there again, and Judge Prindle suggested to him that probably Dr. Dwight did not care any thing about administering the estate, and that he might perhaps negotiate with Dr. Dwight, and Dr. Dwight would renounce and let the whole thing go, and Judge Prindle said to Mr. Murphy, "You must get a lawyer to attend to the matter for you, but you had better settle it up amicably than to fight over this will; if you do fight over it you will spend your money, and it will probably amount to nothing;" then Mr. Murphy said to me, "If you will influence Dr. Dwight to renounce I will give you $150;" I says, "I am acting for Dr. Dwight and I shall do nothing of the kind, but I will propose the thing to Dr. Dwight and see what he thinks of it; if he is willing to give it up and let you have the control of this matter, why that thing can be arranged in that way; but with your feelings in the matter I don't think he will do it;" Mr. Murphy wanted me to see Mr. Dwight in regard to it, which I did; Dr. Dwight was very indignant and said he would do nothing of the kind; he said he didn't care any thing about administering the estate, but he said his name was in there as executor, and he said that he considered that John was competent to manage the affairs of the estate, and that the property would not suffer any thing if he did administer upon it; but with those charges he would never do it until Murphy had withdrawn every charge and intimation of that kind, and he instructed me not to inform Mr. Murphy of that because he said that John would do any thing in relation to the matter that was necessary; he told me to say nothing of the kind; John saw me afterward and wanted to know what the doctor told me about it; I told John that Dr. Dwight said as long as those charges were made that he would not have any talk or conversation with him in regard to the matter at all; I then told John

that he hadn't better undertake to fight the will, and he told me he had seen counsel and that they had advised him not to do it, and that he did not think that he should do it; I afterward saw Dr. Dwight, and Dr. Dwight said if he did not fight the will and admitted it to probate, and would retract what he had said in regard to that, why he gave me to understand indirectly that an arrangement could be made; that arrangement was made, and the day came on for the proof of the will; the Murphy heirs were all there; some of them resided in the town of Columbus, I think; they were all there present, and the will went to probate, finally, without any contest; after the will was proved, it was suggested by some one—not by me; by some one on behalf of John (I think it was Mr. Franklin or some such name, I can't recollect now, but it was some friend of John's, on his behalf)—that an arrangement be made of that kind, and Dr. Dwight then said, "If all these charges are withdrawn—if the will is admitted to probate and there is no charge of wrong—why, I will talk about it," and he was informed by the surrogate that the will was proved; that there was nothing further for him to do only to take out letters and go and settle up the estate. Dr. Dwight and I then consulted; Dr. Dwight finally said that if Mr. Murphy would pay him $50 for his trouble in the matter and what expenses he had been to, and pay my charges and all other expenses, that he would renounce and would give a bond and some other papers; I forget what; but the proposition was made to John, and John accepted it; I then drew the bond between Dr. Dwight and Murphy; I drew some other papers; I can't now tell what; and then drew the renunciation; Dr. Dwight renounced; I drew the petition for letters of administration with the will annexed and the bond; it was executed there, and John took out letters; after the letters were taken out, the agreement was passed between John as administrator, with the will annexed, and Dr. Dwight; John then wanted to know what my charges in the whole matter were; I told John that I should charge him $75; I did; he paid the money without any objection and went away; this closed up the settlement between John and I; the settlement between John and Dr. Dwight was made after dinner; the will was proved before dinner, and Judge Prindle was not there in the office again that afternoon until Murphy had settled with me; Judge Prindle then came in the office again and wanted to know if I collected for the stamp; I think there was a five dollar stamp used; I told him no; that all I collected was for my own services, and he wanted to know how long Murphy had been gone; I told him, and he said he

wanted pay for the stamp and went out, and I presume that he saw Murphy and got pay for the stamp; I know that I didn't collect pay for the stamp, because it was furnished by Judge Prindle.

By Senator D. P. Wood:

Q. What was the amount of that estate? A. The amount of the estate was about $30,000, I should think; but the amount of personal property, I think, as sworn to, was about $10,000; well, I can't tell you the sworn value of the estate.

Q. That is near enough. A. The petition of Dr. Dwight, who didn't know any thing about it, was, that the real and personal estate would not exceed the sum of $10,000 in value; the petition for administration with the will annexed, made by John Murphy, puts the value of the estate, I think, at about $30,000.

Mr. PRINDLE—Do you remember what charge this Todd estate is—the number?

Mr. STANTON—Number 19.

Mr. PRINDLE—I want to call the witness' attention to charge number 19.

Q. In relation to the last will and testament of Charles E. Jacobs' estate, what do you know in regard to that; in regard to money received by Judge Prindle; do you know any thing about that? A. Yes, sir; Mr. Todd came to the office; he was a man with whom I was not acquainted, but I remember him; he came to the office and Judge Prindle was down to his house, I think; he came there and wanted to see the surrogate; I asked him what his business was; he said he wanted to prove a will; I told him he would find Judge Prindle at his house, I thought, and he went away; he came back in a short time with Judge Prindle; there was an infant in the case, and Judge Prindle appointed me special guardian to act for the infant, which I did; he had no attorney there in the office; Judge Prindle asked him if he wanted a copy of the will, and he said he did; I made a copy of the will; that is my recollection; I made a copy of the will and acted as special guardian; after they got through with the business, and it was closed up, Mr. Todd asked Judge Prindle what his fees were, and Judge Prindle told that there was no fee; that he was not entitled to any thing; but that the special guardian was entitled to pay for a copy of the will; he asked Judge Prindle how much; Judge Prindle told him that in estates of that kind, that it was his custom usually to allow ten dollars, but that he could give him so much money, and I can't be positive how much, and he gave him some money; Judge Prindle

took whatever he handed him; they stood at the high desk, and he passed the money to Judge Prindle; Judge Prindle took the money with a dollar stamp that he had there and passed it to me; I sat at the table fixing the probate as we call it; that is a copy of the will which is issued after the proof of the will; it is for the convenience simply of the executor, to have it to refer to and use in evidence; it is no part of the proof of the will; not connected with the proof of the will; it is simply a paper issued afterward, for the convenience of the executor; my attention was never called to the transaction again, until during the campaign; a gentleman that has been sworn here—

Q. What was his name, do you remember? A. Why he is highway commissioner of the town of Norwich, Russell A. Young; he came one day to me and wanted to see my memorandum in regard to the transaction; he told me that Judge Prindle had said that whatever money was received that day, was paid to me, and was paid to me that day, and that he would take his oath on it, and asked me if there was any thing in my memorandum in relation to it; I told him my memorandum was at my house; I would go and get it; I did; I came back to the office and examined my memorandum, and I found my memorandum to read, "received six dollars;" whether the mistake was with Mr. Todd, or whether it was with me in copying it in my memorandum, I can't tell; but I know whatever money was paid there by Mr. Todd, he laid it on the desk and Judge Prindle picked it up and passed it to me.

Q. Do you remember that an application came in some way for a certified copy of the will of Henry Bennett? A. I do, sir.

Q. State in regard to that? A. There was a letter came from John T. White—I think it was John T. White—from New Berlin; it was received in the absence of Judge Prindle; Judge Prindle was absent on political matters; Supreme Court business; he expected to be gone a week; Dr. Prindle opened the letter and showed it to me; that letter inclosed another letter from the west somewhere; he desired an authentication of the record of the proof of the will of Henry Bennett, for record in a foreign State; specified what they wanted; they wanted an entire copy of the record, and entire proceedings in the case; I understand that in some of the States they do not require any thing to be recorded; in other States they do, every paper in connection with it; and as a matter of safety I made a copy of every single paper connected with the case, both that appeared upon the record and appeared upon the file; the copy of the petition, the order for the citation, the citation itself, and

the proof of service, the order for the proof of the will, the order for appraisers, copy of the letters testamentary, order for issuing letters testamentary, the order appointing special guardian, copy of the will, copy of the proofs, copy of the certificates attached to the proofs, copy of the certificates attached to the will; then I made the certificates for authentication, took them to Mr. Thompson, and he or his clerk helped me to compare the whole thing; Mr. Thompson certified it; I put on the necessary stamps; I took and run the thing through; I thought it was worth ten dollars to do the thing; I made out a bill and receipted the bill, and put on one corner of it "please remit;" I mailed it to Mr. White; the bill has been presented here in evidence; upon the day of the county convention, I went over to the Eagle Hotel; as I passed in, Henry Harrington, who was candidate in the convention in opposition to Judge Prindle, stepped up to me with the bill and handed it to me; said he, "Mr. White has sent over that money by me;" said I, "All right, sir;" "well," said he, "he wants it receipted;" said I, "the bill is already receipted;" he says, "it says 'please remit' on there, that would show it was not paid;" I took the bill and tore right off the "please remit," and passed it back to him and took the money and put it in my pocket; it had been circulated there that day that they were going to make some charge against Judge Prindle and said I, "I suppose you want this as a case against Judge Prindle," and he said nothing more; I passed on.

Q. Let me ask you if you did not have to examine the statutes carefully to draw the certificate for authentication? A. I did, sir.

Q. It was an out-of-the-way business? A. It was an out-of-the-way business, and I will venture there is not one lawyer in ten that can do it without a careful examination of the statute.

Q. Did Judge Prindle know any thing about the matter at all? A. He didn't know any thing about the transaction until it came out in the paper; I will say that I have counted the folios since, as near as I could; I didn't count every word, but I took the average; counted the words in a line and averaged it, and I find that the legal fees, at six cents a folio, would be something between $8 and $9 — nearly $9 — so that I did charge him a little more than the legal fees would be; at the time, I didn't think any thing about it; I thought it was worth $10, examining the law and every thing; I made it out and sent it on.

Q. You had to certify under the United States law, under the act of Congress? A. Yes, sir; it was certified under the act of Congress.

By Mr. MYGATT:

Q. To go to Wisconsin was it? A. I think it was Wisconsin; it was one of the western States.

By Senator D. P. WOOD:

Q. What do you mean by "legal fees"? A. Why the statute provides that the surrogate can charge for all certified copies of papers made in his office, six cents per folio.

Q. You mean the legal fee allowed to the surrogate for copies? A. I mean the legal fee allowed to the surrogate for copies; that it would amount to between $8 and $9; I charged him a little more than that fee would be actually.

Q. Have you got the final account of the administrator of the King estate? A. It is there somewhere; you will find it.

Q. State with regard to that? The first that I remember about that transaction is, Mr. King being at the office with some other gentlemen, and Judge Prindle drawing part of the papers and I drawing part of the papers for the appointment of guardian and for letters of administration; just what was the charge received I could not tell now, for I have no memorandum of it, nor I haven't any recollection, only I know I put the item in the account; "cash, paid expenses to Norwich and surrogate's disbursements, and granting letters of administration and guardianship, $10.54;" what the amount paid at the surrogate's office was I can't tell; it might have been $10, but that is the item I put there; Mr. King saw it, and it was sworn to by him; now, whatever papers I drew of that nature at any time Judge Prindle paid me for it at the time, whatever was charged for doing it, whether he helped me do it or not; whatever money was received he always paid it to me, and that was the general rule; farther than that, I can remember nothing about it, for I have no memorandum; after that time there was a great many legal questions came up in the case; I think I can state that it was the most badly mixed up of any estate I ever saw; Fuller P. King died; he left this child; the child was given away, and within a short time his widow died; he left a cheese factory; he left his matters in a very complicated manner indeed; he came to Judge Prindle and talked to Judge Prindle about it; Judge Prindle told him that he could not, in any such matter as that, give him any advice at all, because he would be liable to go into lawsuits; and if he undertook to advise him, he would, perhaps, get worse mixed up, and he should have the accounts finally to pass upon, and he could not advise him; Mr. King then came to me, and told me that he wanted

me to help him out all the way through; I then took hold of the matter; Mr. King had a claim against the estate, which I attended to before the surrogate, and we had a great deal of difficulty in getting it allowed; during the continuance of the proceedings it was necessary to sell infant's real estate; Mr. King was appointed guardian of the infant; the infant was in Connecticut, and it was given away to a Mrs. Champion, who lives in Mystic, Connecticut, and every thing that Mr. King did, instead of doing it really upon authority, why, he consulted Mr. Champion's people; I took proceeding to sell infant's real estate; I had figured up Mr. King's accounts before we took this proceeding, and I know what was due Mr. King, and what Mr. King had paid out, and that he had over-reached the bounds of administration; that he had paid out money that he had not got from the personal estate; I took proceedings in connection with the sale of the infant's real estate, to get an order for him to apply a certain portion of the proceeds of the sale of the real estate in payment to himself, as guardian of this child, and to reimburse him, as administrator, so that when he came finally to close up, he could have every thing in proper shape; I charged him on the final settlement in the matters connected with that, and for all my counsel fees in connection with the matter, $50; I would say in regard to that, that the account I made it out twice; Mr. King was there at Norwich three times, and stayed all night; and during the time that he was there I gave my entire time and attention to the matter, and I finally got it straightened out; so I thought it was legal and proper and satisfactory; that is the final account [exhibiting paper].

Mr. E. H. PRINDLE—I would like to have that marked.

Mr. MYGATT—It is not to go in the record.

Mr. E. H. PRINDLE—No.

Q. Do you remember a case in which De Witt Craft was executor? A. I do, sir; quite well.

Q. You remember the particulars of the case in which De Witt Craft was executor? A. I do, quite well.

Q. Who was executor in connection with him? A. Daniel W. Lane.

Q. Who employed you, if anybody? A. I will state the facts about it, and leave the question of employment open; I couldn't say that it was a straight employment; Lane I was well acquainted with.

Mr. MYGATT—This is in relation to the 22d charge.

The WITNESS—Mr. Craft was a stranger to me substantially; they came there together; they came there to prove the will; I was in

the back room, busy, and Judge Prindle told them squarely he couldn't do the business; that it was not a part of his duties to do the business, and that they had better get an attorney to do it; Judge Prindle came to me and wanted to know if I would come out and draw the papers for him; and I told him I was busy then, and if he would commence and take the affidavits; and he said he wanted to go away, and he would straighten out the matter after he got through; that he could take their affidavit and get some of the facts; Judge Prindle drew a part of the petition; he commenced it; he put in the heading of it, a few words, and then I drew their affidavit at the end of it, and they signed it, with the understanding they were to figure out the facts with me and tell them, and Judge Prindle went out; when I got through I went out; Thomas was there in the office, and I went to work with them to figure out the heirship and where the heirs resided and the facts in regard to it; they didn't know, and I started out about it and got the maps and charts, to examine and find out where certain towns were; they knew the village but didn't know the county, the place of residence, and finally I got it so that it was satisfactory; Thomas sat there, and I asked him if he would not write it in the petition, and Thomas did so, and filled in the facts in the petition; when they got through I filled out the citations and copies, and told them I would see to the mailing, etc.; in fact they requested me to do it; Craft said he didn't know any thing about it; that I could get it right, and requested me to do it, and I told him I would do it, and he wanted to know what the charges were for doing it; I asked him if he wanted me to do the entire thing in connection with the estate, and he said he did; to do the whole thing, and that he wanted it done properly and right; and I told him, "let it go until it is through, and I will charge you what is right; if there is any mistake in regard to the heirship, you write me and let me know," and he said he would; I made out the citation in accordance with the facts he gave me, and sent on the citation to Albany for publication, and after the citation had been here about a week, I got a letter from him stating there was a mistake in regard to three or four of them; that he didn't get their residences right; I then, of course, made out another citation, and sent that on to Albany; the Argus was sent to us; I kept track of the paper, and I saw that they were, for a while, at least, publishing both citations; about that time I was married, and I went east on my wedding trip, and I told Judge Prindle to have the matter all straightened up, and whatever it was worth for my services in the matter, to collect; that the will was to

be proved during my absence (I knew about how long I should be gone); whatever my services were worth he could collect of the administrators; I went away and told him this further fact that these citations—that two citations had been sent, and I says, probably there will be two publication fees, and you had better tell him how it is and collect enough; I don't know any thing more in regard to the transaction until after I got home; after I got home the citations had not come when I got back; I wrote a letter to the Albany Argus asking them to send on that proof, and they did send on the proof, and the publication fee was $9.57; that was all they had charged; what Judge Prindle told him, I don't know about the publication fee, but when I went away, I supposed there would be a double publication fee, for the reason I sent two citations and re-mailed three or four of them; there were two affidavits mailed and proof of service at two different times, and the residences were changed; I would like to say further, that Craft has since that time offered to pay me the balance of the bill that Judge Prindle presented, and I told him we would let that matter go until this Senate had decided it was the duty of the surrogate to do the business or not; if they decided in his favor he, of course, could pay it, and he said that was satisfactory.

Q. State what you know in regard to the Orin Dilley estate? A. I would like to ask who was the executor; Warren Wightman?

Mr. E. H. PRINDLE—Do you know what charge that is?

Mr. STANTON—Twenty-third.

The WITNESS—I was appointed on the proof of the will; I was not the attorney for the executor, not drawing any papers or the proof of the will; I acted as special guardian; I furnished the stamps that were used; $2 or $3, and there was some question over the will; some question of law in regard to which the executor inquired then at the surrogate's office; I took the books and looked it up; he stated that it was at variance with some New Berlin lawyer; I think Mr. Jenks; I would not be certain; that Mr. Jenks and I didn't agree; I told him I was right, and I got the books and examined it and told him what I thought about it; when I got through for my services as special guardian, I think Judge Prindle told him to pay me that amount, $10 for that, but I wouldn't be certain; I have no recollection on the point.

Mr. PECKHAM—State only what you recollect? A. I have only a general impression; that is all I charged him for the entire thing, $15, which he paid; that is all I can say about it.

By Senator D. P. Wood:

Q. Does that include the stamps? A. That included the stamps; I got the stamps myself; there is a peculiar thing about it that makes me recollect getting the stamps; two years ago last winter I was thrown from a buggy, and my back very seriously injured, and at that time I had a relapse and my back was lame, and I remember of going on a crutch to the bank and getting the stamps in that very matter; I remember that morning being assisted to the office; I had some other matters there to attend to; I remember going on my crutch to the bank to get the stamps that day.

Q. State what facts you remember in regard to the two Furman estates? (That is under the 24th charge.) A. The gentleman who was sworn here upon the stand I don't recollect at all, but I think he was there and made the application, but Mr. Steer, Samuel Steer, of New Berlin, was the man who did the talking.

Q. He was a justice of the peace? A. I understood him so; he came there to the office and had some talk with me about proving the will; what talk he had with Judge Prindle, or anybody else, I don't know any thing about, but I know he had talk with me about proving the will; he said he had two wills to prove, and wanted to know what I would charge him for doing the business; I told him I would prove him the two wills for $40; we made that bargain before I touched a paper or any thing in regard to it; I then drew the petitions which I have here in my hand, and Judge Prindle issued the citations; they took them and went away, and they were served; I drew an admission of service to send away east somewhere; they came on the return day, and the will was proved; there was nothing said as to what the charges were on that day at all; Mr. Steer is the man that paid me the money; he took the money from another man; whether it was Furman or not I don't know; Steer took the money and passed it to me directly.

Q. Are those the petitions for the proof of the will that you have in your hand? A. Yes, sir.

Q. In those petitions what is the amount stated as the value of the estate? A. The value of each estate is sworn in there at the sum of $2,000.

Q. Sworn by whom? A. Frank W. Furman.

Q. In each estate? A. Yes, sir; in putting in the value of the estate we always put it at a low figure, in such way to cover stamp duties, and they never desire to swear it up any more than necessary; it was always put in at a low figure.

Q. Was Judge Prindle in the office when the money was paid to you? A. No, sir, he was not; he was there in the forenoon, and the wills were proved in the forenoon; I didn't get the papers made out for the executors to take away, or what they were to have; there were other papers drawn by me there in connection with those estates; at this day I can't tell what, but I recollect well of drawing agreements and other papers of some kind, all of which went into the bill; they came in in the afternoon to get them, and Judge Prindle wasn't there; and Steer, without asking me what the charges were, paid me the money, $40.

Q. Were letters of administration ever issued in the estate of Almon Trask? A. No; he had a will proved.

Q. Who drew the papers? A. I drew every paper drawn in connection with it.

Mr. MYGATT — This is the twenty-fifth charge.

WITNESS — And, from the time the proceedings were commenced until they were closed, I did more than two days' work in examining law for Gregory in regard to real estate questions; there was some question over adverse possession; he said he had got a farm that he bought for several thousand dollars; there was a question about the Mudges at New Berlin; they had a deed, and I believe he didn't have a deed; they claimed to hold it, and his only claim was adverse possession.

Q. There was a deed missing in his title? A. Yes, sir.

Q. And one George Mudge claimed that the deed never had been given; do you recollect that? A. Yes, sir.

Q. And that he was in fact the owner of it? A. Yes, sir.

Q. Wasn't Gregory very much alarmed about that matter? A. Yes, sir; it involved several thousand dollars to him.

Q. Didn't he from day to day come here and talk about that matter? A. Yes, sir; and I examined law about it, and he had some talk with Judge Prindle in regard to the matter too, and there was a difference of opinion in regard to these matters between Judge Prindle and myself.

Q. How much did you charge? A. I charged $35; the money was paid to Judge Prindle in my absence, and he didn't have any memoranda of it, and I presume Judge Prindle thought $25 was enough, and was the amount he took; but Judge Prindle paid me the money when I got back, and I told him my bill was $35, and he said that was enough, and let it go at that.

Q. How much was the estate? A. The estate of Almon Trask was sworn at $10,000.

Q. The business in regard to the end of that farm was his own individual business? A. Yes, sir; that was all the charge made.

Q. All the charge you made for the whole thing? A. I charged him for the whole thing; I didn't charge it to the estate, I charged it to him; all these charges were charged directly to the person; whatever business I did for them I charged it to them direct.

Q. State what you recollect in regard to the Eddy estate briefly? A. Eddy came there with B. C. Emmerson, who is a justice of the peace of the town of McDonough; Judge Prindle was not there at the office, he was at his house; they came there in the forenoon; Emmerson told me that in regard to the Patrick Dolan estate it was necessary to sell real estate to pay debts; he wanted to know what I would charge him for my services in doing that business; I told him I couldn't tell him until I had gone through with the business, but that probably I should charge him from $25 to $35; he said that was cheap enough; he then took a will from his pocket and gave it me, and this young man was with him, and he then introduced this young man and he said, this young man wants this will proved; I said all right, sir; I took the will and drew the petition; the petition is there somewhere with you; I drew the petition and told them that I would have the citations in the afternoon; at noon I went to Judge Prindle's house and presented the petition and asked him if I should give them a citation; he told me yes; I went back to the office and made the citations and gave to him, and he went away home, and on the return day of the will he came back there and the will was proved, and he wanted to know what the charges were and I told him, which he paid without objection, I think; I don't know but he asked me if I couldn't do it a little less; perhaps he may have done it; on the day he came back there I paid this money, the will was proved in the forenoon; he didn't get his papers until afternoon, and he paid me the money directly, when Judge Prindle wasn't there; I remember that thing distinctly.

Q. State the facts in regard to the Winsor estate; it is the twenty-ninth charge? A. I would like to state in regard to this matter, that the petition is sworn to before me as notary public; something I never did when Judge Prindle was in office; never took an affidavit of the kind; always had it taken before him as the surrogate when he was there.

By Senator D. P. Wood:

Q. That is in the Eddy case? A. Yes, sir; the papers in regard to that estate are with the counsel somewhere; I would like to have

them; in regard to the Winsor estate, Ruth C. Winsor then, now Ruth C. Phillips, was the window of La Fayette Winsor; she came to the office alone to see about the estate; I drew the petition for her and I drew the bond for her; she asked to have — wanted somebody joined with her; she finally settled upon Derrick L. Shepard, the man who was sworn here as the man she would have joined with her; I think he is a brother-in-law, he is some relative at any rate; she decided upon having him join with her; she took her petition and papers and went home; the papers were executed over at New Berlin and sent back by mail; letters were issued by Judge Prindle, I presume I may have made them out myself; I cannot recollect as to that; I may have made those out myself; at any rate they were sent back by mail; afterward Shepard came over and did a good deal of talking about the estate, and I counseled him along through, for which I never made any charge. At one time when he was there he asked what the charges were on taking out letters of administration; I had a bill made out that I made out at the time the letters were issued; I got the bill and gave it to him; it was a bill for $12.50, which included stamps and every thing of that kind; he paid me the money and I gave him a receipt for it; he afterward came there and I drew a petition for notice to creditors to present their claims; and I charged him $2 for that and he paid it and I gave him a receipt for it; I think on the final settlement he came alone to apply for the final settlement; at any rate I drew his petition.

Q. Did you hand the petition over in your handwriting? A. Yes, sir; I drew the petition and had the citations issued, and he went away; in the meantime the widow came over and there was some difficulty between her and Derrick as to the settlement of the estate.

Q. You mean Derrick L. Shepard? A. Yes, sir; she claimed she was entitled to some things, and he claimed she wasn't; and she had the idea Derrick was trying to cheat her; at any rate they came there at the final settlement, and there was quite a time there between Derrick and her; during the time, Derrick got considerable angry at me because I stood up for the widow; I claimed she was entitled to certain things; there was an account rendered and made; I charged $20 for my services on the entire final settlement; that night, that evening, Shepard came back to the office and said he had been looking over his books, and that there was a mistake made in regard to the amount he had rendered; that he had rendered either not enough or too much; and the result was I had

to go to work and make the account over again, which I did, and he wanted to know what my charges were, and I told him nothing, and he took out of his pocket $3 and said he would pay me that out of his own pocket voluntarily, and he paid me the $3, I understood, for correcting the account; that is charged here; the $20 is charged in the account; the $12.50 he paid me, and the $2 he paid me; that is all he paid me for services and disbursements, etc., of the entire estate; the personal property was $2,650 besides a large amount of real estate; the receipts I gave him at different times were among these receipts placed on file; there is one, I think, that I showed you; there is the other.

Q. Were they introduced in evidence? A. No, sir.

E. H. PRINDLE—I introduce these receipts in evidence; the first one is marked Exhibit 46, and reads as follows:

EXHIBIT No. 46.

$2.00.

Received of Derrick L. Shepard, administrator of Lafayette Winsor, deceased, $2.00, drawing petition, etc., notice creditors in the matter of the settlement of the said estate.

Dated *July* 22, 1869.

GEO. W. RAY.

E. H. PRINDLE—The second receipt is marked Exhibit 47, and reads as follows:

EXHIBIT No. 47.

$12.50.

Received of D. L. Shepard, administrator of the estate of Lafayette Winsor, $12.50, surrogate's charges and disbursements in the matter of granting letters administration on said estate, and for drawing papers in said matters.

Dated *February* 4, 1869.

G. W. RAY.

Q. This is the final settlement of that estate drawn by you? A. Yes, sir, it was but a short time after that final account was made that Shepard came to me again and he was executor of another will, and said he anticipated another contest over it, and if they had any trouble he said he wanted to employ me; that conversation was in the presence of Sylvanus Shumway.

Q. That is the father of Charles Shumway, who has been sworn? A. Yes, sir.

Q. State who you were employed by in the Loomis estate. [That is the 30th charge.] A. By Mr. Atkins.

Q. Who has testified here? A. Yes, sir; he was down there twice on the matter himself, and he finally told me he wanted I should take hold of it and attend to it, and whatever was right they would pay me; on the proof of the will he didn't appear; I attended to it, and made the papers necessary to the executor, which had nothing to do with the proof of the will; and Mr. Hayward came in in the afternoon, the first I had seen him, and I don't know that I knew the man then by sight; he came in and wanted the papers in the Loomis estate and Judge Prindle referred him to me; I took the papers and passed them to him; he said he understood there was something to be paid; I told him yes, that I had a bill against him; he wanted to know how much, and I told him $10, and he handed me a $10 bill and I gave him a receipt for it, and he went away without any further words.

Q. What was there about the T. Lewis estate? A. I remember that estate well, of which Luther Brown was the executor; I drew the papers for the proof of that will one day in August, I think it was; it was along in the summer time; I was in the back office alone; Prindle wasn't in the office; the will was proved in the spring of the year some time; this was along in the latter part of the summer; Brown came into the office and wanted to know if I had any bill against him in that matter; I told him that I did not know as I had any bill; that I drew the papers; he said he had asked Judge Prindle what his fees were, and that Judge Prindle told him he didn't have any fees, but that he had ought to pay me for drawing the papers, and he said he had asked Judge Prindle how much, and he said Judge Prindle said $10 would be about right, and he gave me a $10 bill and I gave him a receipt for it and he went away, and that was the last I heard of it until last fall when I heard him claim one day that he paid Judge Prindle $10 for proving that will, and that he had Prindle's receipt for it, and I told Charles Scott —

Mr. Peckham — No matter about that; that is no evidence.

By Mr. E. H. Prindle:

Q. The receipt was given by you? A. Yes, sir.

Q. That has been put in evidence? A. Yes, sir; Judge Prindle wasn't there at all; Brown told me those very words; I remember it well; he said Judge Prindle said $10 would be about right.

Mr. E. H. PRINDLE — This evidence is in relation to the thirty-second charge.

Q. What do you remember in regard to the Cassels estate? A. If you will let me see the papers I can give the dates accurately; it was in 1870 or 1871, the first papers were drawn; the first papers were drawn entirely by Judge Prindle; I was away from home; when I got back, Judge Prindle told me about Cassels having been there; he said he wanted to settle up the estate, aud wanted to know what the entire charges would be, and that he had told him he would get the entire thing done for him for — I cannot tell how many dollars, but for a certain amount of money, and he said he told him that he would do it; I didn't know Cassels, and he wanted I should remember it and attend to it; he said Cassels had paid him the money.

By Mr. STANTON:

Q. You mean Mr. Coates? A. Yes, sir; he gave me $25, I think; I wouldn't be certain; he gave me some money; it was as much as that; I don't know that I ever thought any thing more about the matter until the question came up in election time; then my attention was called to the matter, and I think it was after election; I wouldn't be certain; but Judge Prindle met me on the street one day, and said that man had come down to settle up that estate, and wanted me to go to the office and draw the papers for him; I went to the office and filled out the petition for the final settlement; Coates was in a very great hurry; it had got to be then nearly time for him to take the train; I just barely filled out the petition, and he signed it; Judge Prindle told him he would have the citation sent up to him; I filled out the citation, and that day or the next day, I mailed them to him; on the day of the final settlement I was talking, down in front of the clerk's office, and Mr. Coates came along; I nodded to him; he and Judge Prindle went up stairs, and pretty soon I followed along up; I knew what he had come for; I was up there for that very purpose; I went and sat down to the table and asked Coates if he had a citation; he wanted to know who I was doing that for; I said I understood from Judge Prindle that he had agreed to have this work all done for you for $25; yes, he said he had; I says Judge Prindle has paid me

the money and I suppose I ought to do the work; he says then you are doing this for Judge Prindle, are you; I says I am doing it under that arrangement; I am doing it for you, but it is at the request of Judge Prindle; well, he said, all right, he didn't want any more charges made in regard to it; I then went to work and took his petition and drew his proof of service and went to work on his account; finally made out his account; Judge Prindle said to him "Mr Ray could legally charge you under the staute $20 for just this." "Mr. Coates," said I, "don't believe there is a word of law in the world giving an attorney a cent's worth of fees for drawing amounts on final settlements;" says Judge Prindle "there is, and I will show it to you;" he went and got the statute of 1863, I think it is, and showed it to him; Mr. Coates then owned up beat; "well," he said, "I have seen one lawyer and he told me he would have done the entire job for $10;" Judge Prindle told him he could not help that; said he, "I told you that I would get it all done for so much, didn't I?" Mr. Coates said "yes, you did;" "well," said Judge Prindle, "that is all the charges there is going to be, isn't it?" well he said he supposed so; Judge Prindle said he "could charge you $20, that would be the statute fee;" he figured up the amount and told him how much it would be for his services and said "he could legally charge you so much more;" well Mr. Coates said he could not pay any more; I then drew up those receipts and read them to him; I put in the account so much paid G. W. Ray for services; so much paid H. G. Prindle for disbursements, stamps, etc.; and I read the account over to him very carefully before he swore to it; "now," says I, "I want you to hear this account and see if it is right, see if it is as you understand it," he said it was all right, but he insisted that he could have got the work done cheaper somewhere else.

Q. Who drew the papers in the Owen estate? A. I drew them all myself; there was in the first place a petition for letters of administration; Judge Prindle issued the letters; after that there were papers drawn for the appointment of a guardian for each and every one of the infants; there were four infants I think; I drew the petition for the appointment of the guardian, and drew the four bonds; I furnished all the stamps that were furnished, and every thing of that kind; then on the final settlement I drew the petition for the final settlement; I drew up the final account; upon the final settlement, the general guardian for the infants being administrator, there was a special guardian appointed; the entire charge on the whole

matter was $30, which they paid; in regard to the paying back of any part of that money, I was told frequently during the campaign, by James H. Smith, that he was going to get a power of attorney to commence a suit against me and get the money back; I said, "Mr. Smith, that is just what I wanted all the time; it is just what Judge Prindle has wanted; it is just what he has invited, that you would test this matter in some legal way; if you will commence a suit and test that matter it will put this whole thing at rest;" well, he kept making threats about every time he saw me and I told him to commence his suit; it ran along until, I can't tell the date of it, but finally he told me one day in the Eagle Hotel that he had got a power of attorney and was going to sue me immediately; I told him I was glad of it, I wanted him to sue me; I said, "as long as I can test this question with you it is all right, but I want you to foot the bill if you get beat;" well, he said there was no trouble about that; a few days after that Mr. Titus came to me and said that that woman had been talked with so much that she believed she had been wronged; she believed that she had paid too much, and wanted to know if I would settle the matter in any way; I told him that I shouldn't do it; that Smith had told me he had got papers to commence a suit, and I was anxious to have him commence a suit, for I wanted to test it in a legal way and know just how it stood in a legal point of view; said I, "I am ready to take the thing into court;" well, he said he shouldn't consent to have any suit at all; said he, "you had ought to make the woman feel all right;" well, I told him I wouldn't have any fuss with the woman; I would pay her back the $30, or give her $30, before I would have her think that I meant to wrong her in any way; and, said I, "if that suit is discontinued and every thing is stopped there, I will talk with you then about a settlement;" well, he said that there shouldn't be any suit, any way; he said Smith wouldn't commence any suit, it was only got up as a scare; I said, "I know that perfectly well; it is a scare and nothing else;" he went off; finally he came back to see me again, and he wanted to know if I wouldn't pay back some part of the money; I said, "Well, how much does she want?" he said, "Well, I don't know; give her just what you think is right; give her something to satisfy the woman;" I said, "will $15 satisfy her?" he said, "well, yes;" I said, "I haven't got $15 here now, but if that will stop the fuss with the woman and make her feel all right, I will see that you have the $15;" he went away and when I went to dinner I got $15, and left it with Dr.

Prindle, and I suppose he gave it to the old lady. That was the end of the transaction.

Q. State what was done in the Chapin estate (thirty-fourth charge)? A. Of which Seth Chapin was administrator?

Q. Yes. A. There was a will to be proved and the parties were all over there. The first that I saw of them, Judge Prindle told me upon the street that there were some parties there that wanted to prove a will and settle up an estate all among themselves. He said he had told them that he would have me come to the office and do the business all up. I went to the office and they were all there; there was an office full; I can't specify who was there; most of them were strangers to me; I knew Mr. Chapin by sight; I sat down at the round table in the center of the room and drew the papers, drew the petition to prove the will; drew proofs of the service of citation, etc.; they all signed it and the will was proved; then there was some talk of a mortgage and the settlement of a mortgage; Judge Prindle drew a cancellation of the mortgage; I drew an agreement; I can't say whether a release of dower or not; I drew quite a long agreement, I know, and when I got through it was a very late dinner hour; I gave the paper over to Judge Prindle and told him to charge them five dollars or six dollars; then I went to my dinner; Judge Prindle afterward gave me, I think, six dollars; I am not positive it was six dollars; I didn't see any money paid and don't know how much was paid.

Q. State what you know in regard to the Parker estate (thirty-seventh charge)? A. My memory is that the letters of administration and letters of guardianship—I think the amount paid was $10; I think the money was paid to Judge Prindle during my absence; that is my memory.

Q. Who drew the papers? A. I think Judge Prindle drew the bonds, and I drew the petitions.

Q. In the two matters? A. In the two matters.

Q. I want to ask you here if Judge Prindle always paid over to you the money that was paid to him for whatever services you did?

Mr. STANTON—We would rather, Mr. President, that specific times and amounts be stated; that is the only reasonable way to examine the witness.

Mr. E. H. PRINDLE—Well, in going back for a great many years, the witness might not remember each specific transaction.

Mr. STANTON—The proofs are in of the amount of money paid to Judge Prindle himself; now if evidence of that character is to

be given, let the attention of the witness be called to the specific amount, and let him state what amount was paid to him in reference to that matter.

The WITNESS—My memory is, that $10 was paid to me in this matter by Judge Prindle; and yet there is a possibility that I may be mistaken, though I think not.

By Mr. E. H. PRINDLE:

Q. Who drew the papers for the proof of the will in the Thomas Milner estate (thirty-ninth charge)? A. I drew them; Mr. Mitchell and Mrs. Milner came to the office, in the absence of Judge Prindle, and spoke about proving this will; that was before I was admitted to practice as an attorney, while I was in the office there; and I drew the petitions then and there. Judge Prindle afterward came to the office; there was a request made by Mr. Mitchell, in order to save Mrs. Milner the trouble of another journey to the office, that Judge Prindle would take the petition and go to her house; at any rate Judge Prindle did take the petition to her house and she swore to it there; my memory is that Judge Prindle got the affidavit of Mr. Mitchell at the same time at the store; but I am not certain; he may have come to the office and sworn to it there. I made out the citations and gave them to Mr. Mitchell, and Mr. Mitchell served them. On the proof of the will I acted as special guardian to two infants. I think it was within a few days after that, within a month at any rate, that Judge Prindle paid me. I think the way it came up was, I wanted to go away somewhere and wanted some money; Judge Prindle said I was entitled to pay as special guardian and for drawing papers in that matter, and he gave me $20. He said when he collected his fees he would collect the money. It ran along and I never heard any thing more of it until on the final settlement; I know Judge Prindle dunned Mr. Mitchell for his bill; presented a bill for $35, and Mr. Mitchell paid it. I had nothing whatever to do with the final settlement; there was another attorney engaged in the matter.

Q. That was Mr. Marvin? A. Mr. Marvin; he did the rest of the work.

Q. Do you remember what Mr. Mitchell's commissions in that estate were? A. $400, I think.

Q. Do you remember what he paid Mr. Marvin besides? A. Mr. Marvin had about $300.

Q. For doing the work that he did in the estate? A. Yes, sir;

it was over $200, and I think about $300; I don't know but a little over $300; the final account will show.

Q. What was the size of the estate? A. The estate was sworn on the start at $20,000; I think the amount of the estate was about $30,000, as shown by the final settlement.

Q. Who swore to the petition to prove the will? A. John Mitchell swore to the petition; he swore that the estate was $20,000; Charlotte C. Milner and John Mitchell both swore to the oath of the executor and executrix.

By Mr. MYGATT:

Q. What does the final accounting show the estate? A. (Referring to the paper) $21,111.41.

By Mr. E. H. PRINDLE:

Q. Who was the attorney for the executors of the Ferguson estate (fortieth charge)? A. Mr. Chase, of Greene.

Q. Did you act as attorney for the executors in that estate at all? A. No, sir; only on the day the will was proved, I examined some questions of law for Mr. Watson; he asked me a good many questions in regard to it, which I examined for him, I acted as special guardian for the infants.

Q. How much did you receive from Mr. Watson? A. Fifteen dollars.

Q. How many executors were there for the Winter estate (forty-first charge)? A. There were two executors and one executrix.

Q. Were you employed in that matter? A. Well, I don't know that I was; if a man should swear that he didn't employ me, that he didn't understand it so, I wouldn't swear that he did understand it so.

Q. What did you do in that matter? A. I drew the papers.

Q. What papers were they? A. I drew the petition; I made out the citations; on the return day I made the proofs of service; when the application was made, Mr. Watson was not there; he was there on the proof of the will.

Q. You don't mean Mr. Watson, do you, but Mr. Winter? A. Well, who was the other executor?

Q. Mr. Thomas? A. C. R. Thomas, yes, sir; I remember drawing an affidavit for him as executor on that day; the other two had qualified before; on the return day I remember his qualifying with the others; in that estate I think about $30 was paid; there was a publication fee of $9.57, which I paid.

Q. You did all the work of drawing the papers? A. Yes, or

nearly all; Judge Prindle might have done some little in regard to it perhaps; there might have been something done by him; I presume quite likely there was.

Q. The money was paid to you? A. The money was paid to me directly; yes, sir.

Q. State the facts in regard to the Slater estate (forty-second charge).

Mr. STANTON—We have made no proof upon that charge.

Mr. E. H. PRINDLE—In the Avery estate did you make any proof?

Mr. STANTON—No proof made upon that charge.

Mr. E. H. PRINDLE—Or in regard to the Snow estate?

Mr. STANTON—No, sir.

By Mr. E. H. PRINDLE:

Q. Now state the facts in regard to the will of Horace P. Hadlock? A. The application to prove that will was drawn at Mr. Follett's office, and presented by him or one of his clerks for proof; the citations were issued by Judge Prindle; I had nothing to do with that, whatever; the day that the citation was served upon Mrs. Hadlock, she came to the office, feeling very badly indeed; she said that Mr. Wescott had been there and served a citation on her, and had stated what he was going to do; that he was going to inventory the property, and sell some part of it; she wanted to retain control of her property; and she wanted to know of Judge Prindle how she could do it; she said further, that Mr. Wescott was a drinking man; and she said that her husband sometimes drank, and that she believed her husband never would have made that will as he did and put Wescott in as executor, if he hadn't been under the influence of liquor; Judge Prindle told Mrs. Hadlock that perhaps Wescott could be induced to renounce—give up the thing, and she had better consult a lawyer, and see if that arrangement could not be effected; Mrs. Hadlock then wanted to know who she had better get; Judge Prindle then introduced her to me, and told her that I was a young lawyer, and I could attend to it; that I was perfectly familiar with the business; she then talked with me something about it; I told her I would see her; and I would have Wescott see Judge Prindle and talk it over; see what could be done; I did see Wescott, and he came to the office; he refused to renounce without he could have his full commissions; without he could have just as much money out of it as he would if he went clear through with the whole thing; I saw him two or three times; had a good many talks with him, and I got him to talk with Judge Prindle about it, but he would not renounce; he

came on the day the will was proved and admitted to probate; he still refused to do any thing that she would accept; letters were actually made out to Mr. Wescott; they were recorded in the book and stamped, but Judge Prindle did not deliver them over to Mr. Wescott, for the reason that we finally made some arrangement that the thing was to stand right where it was then, until some further negotiations could be had in regard to the matter; then the thing rested there; that was on the 15th day of August; upon the 20th day of August the parties all got together at the office there again; and upon that day an arrangement was made, a compromise was effected, by which Mr. Wescott took $150, and then those old letters were destroyed, and the record of them on the book was scratched out, the letters never having been delivered over to him, never having actually issued; a petition for letters of administration, with the will annexed, had been drawn on the 15th and sworn to on the 15th; that is my recollection; but this compromise was effected on the 20th, and letters of administration, with the will annexed, issued to Mrs. Maria Hadlock, as of the 15th instant, *nunc pro tunc;* Mrs. Hadlock wanted to know what the charges were, and I told her $25; that that was my bill, my charges; she didn't have the money to pay it that day, but said she would go and collect some money of Mr. Johnson, I think, or some one, and went away; a few days afterward she came in and handed me the $25; I then told her that there was $10 for stamps and other little disbursements; she wanted to know if the $25 didn't include the entire thing; I told her no; that there had been two sets of letters made out, and two sets of stamps used, $4.50 each set; and there was some fifteen or twenty cents other little stamps and some other disbursements, I didn't know exactly what; I made her a further charge of $10 and she finally paid it; those charges of mine were for the negotiations I had with Wescott, and for the drawing of the petition and letters of administration with the will annexed — things of that kind.

Q. Did you ever have any conversation with Mrs. Hadlock afterward, about it? A. Yes, sir; I went there with Jonas N. Brooks last fall to see her; it was about nine o'clock in the evening; she was just getting into bed; we rapped at the door and the people in the other part of the house came to the door; Mr. Brooks said he wanted to see her, but if she had got to bed, we would go away; they said no, she had not got really to bed, and that they would call her, and they did so; pretty soon she let us in; she spoke to Mr. Brooks; I had been informed that she claimed that she did not

know me at all; Mr. Brooks spoke to her and then she spoke to me and said: "Good evening, Mr. Ray;" I said: "Mrs. Hadlock, you don't know me;" she said she did; she said: "You are the man that drew my papers for me at the surrogate's office;" we went in and took our seats, and I called her attention to the matter; I asked her if there was a stamp used on the paper she had from the surrogate's office; she said no, she did not have any papers from the surrogate's office; I insisted that she had papers and writings; she said she did not; I asked her if she would go and get her papers, and she said there was no use; finally she went and got a tin trunk, and handed them over, and as she handed them over, she insisted she didn't have any papers; I saw the letters of administration with the proof of the will annexed in her hands, and I took that paper out of her hand and held it up and asked her to read it; she fixed her spectacles and read it, and then she gave in; she said that she did not know that she could tell much about it any way; she insisted when we first went in there, that she did all her business with Judge Prindle; that she did not see or talk with anybody else; I says, "Now, if you have forgotten that you had that paper in your possession, and cannot tell it when it was in your hands, is your recollection good of the transaction;" she admitted that her recollection was bad, and before we went away she admitted to us that she was mistaken about it, and she could not tell much about it any way.

Q. Did you have any talk with her about the commission? A. Yes, sir; I asked how much she paid to Mr. Wescott; she said she paid him five per cent on the personal property; I asked her how much the personal property was, and she said it was $7,000; I figured up five per cent on $7,000, and asked Mrs. Brooks if it was right, and then asked her if it was that, and she said no, it was less than that; then she said it was less per cent; "now," says I, "how much was it?" well, she could not tell; she said she paid him about $100 and I don't know but $25 or $30; I asked her if she was sure of that, and she said she was; I asked her what per cent was paid him; finally she said three per cent; I says, "wasn't it three per cent on $5,000 that you paid him?" she said she guessed it was; then I figured it up and said, "is not three per cent of that $150;" and she said it was; I asked her if that was not the amount she paid him, and she admitted finally that she thought it was the amount she paid him.

Q. Had she, previous to that time, made this affidavit that has been spoken of? A. Yes, sir; the reason I went there to see her was, on account of the appearance of that affidavit.

Q. Were you employed by Mr. Bowdish? A. I was employed by Charles G. Bowdish, and W. W. Bowdish and Arvina C. Bowdish in the first place; I afterward saw each of the residuary legatees, and acted for them all.

Q. State what you know in relation to that estate? A. The first I knew of it Mr. Charles G. Bowdish came to me in the office, and he said he had been advised to see me in regard to it; he told me that the widow had not notified him of the death of his uncle, and that she had hurried him off to bury him, and that he had, with the utmost haste, got there just in time to see him put into the grave; that he had been informed and believed that he was the executor named in the will; that the widow had refused to let him see or read the will, and had claimed that her residence, and the residence of Mr. Bowdish at the time of his death, was in the State of Ohio; that if she went there, she could hold the entire property, and that she was going to take the will and go there; he said he was informed she was going to start the next day, and he wanted to know what measures to take; I told him that the best thing for him to do was to petition himself as executor to prove the will; to have a subpœna served upon her to appear on that day and produce the will, and I thought that would stop her from going away, he told me all the facts he knew in regard to the matter; we consulted a good while; I drew the petition; he signed it as executor; he was informed that he was the sole executor; I went to find an officer to send up there to serve papers upon her immediately; I could not do it; Mr. Bowdish was anxious to have it done then; I took the train and went to Earlville and ascertained she was stopping at Mr. Parsons, I think, was the name; I went to the door and every thing seemed to be closed up; I rang the bell, and the door opened just about, I should say, three inches, and there was a lady asked what I wanted; I didn't see Mrs. Bowdish; I told her that I wanted to know if Mr. Parsons lived there; she said they did; I asked her if there was a lady stopping there by the name of Bowdish; she said she believed there was; she said, "What do you want?" I said, "I would like to see Mrs. Bowdish;" she says, "Are you the constable?" says I, "No;" says she, "Where are you from?" I says, "I am from Norwich; I came directly from the surrogate's office with some papers that pertain to Mrs. Bowdish's

estate; they are papers of a great deal of importance and I want to see the lady;" "well," she said, she would "see." She left the door and went back, and I saw she was on the look-out for officers, and then I passed right in; I followed her right in to the sitting room, and I found two ladies there; one of them I found I knew; I had delivered an address at a 4th of July celebration a year before, and knew this lady at that place; I had made her acquaintance there; I was pretty well satisfied that the lady I saw at the door was Mrs. Bowdish; I took the chances and served the papers upon her, and then I went away, and I returned to Norwich, and immediately informed the Bowdish heirs what success I had had, and told them I guessed that she would be there, and they went home; next day she was down and saw Judge Prindle in regard to the matter; I heard her claim to him that her residence was in Ohio, and that she should not submit to have the estate administered upon in the State of New York; I immediately went to work serving citations; some of the heirs were out of the State, and scattered all over New York State and different places; Annie Ogden was a necessary and material witness in the case, as the young men informed me; they wanted I should see her; I hired a livery team and went to Freetown, in Cortland county, and served the paper upon her, and saw her personally to get the facts from her, in regard to the condition of Mrs. Bowdish's mind; the nephews claimed she was of unsound mind; they claimed she was insane, and from what I afterward saw of her, I made up my mind there was nothing of that kind; I went to Richfield Springs and served the citation, and I went to Hartwick, in the county of Otsego; I started for Canandaigua, and I went as far as Syracuse, and I heard of the death of a friend and immediately returned; afterward I got service in another way; there was a publication fee, in a State paper, of $15 and some cents; after the will was proved, Mr. Bowdish came from Connecticut on the proof of the will; after the will was proved, I, at their request and suggestion, filed papers, and got an order for the stay of proceedings; stay of the issuing of letters testamentary to her, until the question should be decided whether or not she should be required to give bail; if you will give me the papers in that estate, I can state what papers were made out and issued (papers handed witness); there was an order for the executrix to appear in the matter on that question, and the order was served upon her; there is the affidavit of service by the officer, and his fees I paid; there was a subpœna served upon her

in the same proceeding, and her fees were paid by me, or by the officer, for attending there as a witness: there is the affidavit of intention to file affidavit, and there is the objection to granting of letters testamentary.

Q. Those are not blanks? A. No, sir; they are all written up in full, for there were no blanks for any such proceeding; when I had got all through with the matter, I wrote to the Bowdish boys in regard to it, and Charles wrote me a letter congratulating me upon our success; in regard to her giving bail, she didn't contest the matter on the return day, although she claimed she should, up to that time; she appeared and gave bail; I drew the bond, and furnished all the stamps and every thing, and had my costs taxed; that is, I had them taxed in this way; I made out a bill, giving my disbursements as near as I recollected them, at the time; I see now that there are some slight mistakes; none of any great importance; I had my costs taxed by the surrogate and allowed; that was done in her presence on the final winding up of the affairs; I made out my bill of costs and swore to it and had an affidavit annexed and she knew what it was, and the surrogate made an entry and order for the payment of the costs in both proceedings, including all the disbursements; $50 was allowed C. G. Bowdish out of the $225 which I paid him and I have his receipt for; Mr. Bowdish wrote me a letter congratulating me upon my success.

Mr. PECKHAM — Never mind about the matter of congratulation.

WITNESS — They told me they were willing I should have liberal pay out of the estate; I showed Judge Prindle that letter; I appeared and acted for each and every one of the residuary legatees named in the will: the interest of the property was given to her during her life-time, and the fund itself was going to these persons for whom I acted.

Q. Did you consider yourself a clerk of the surrogate? A. No, sir, no; I never acted as such in any capacity, except when he was going away and gave me some special authority to act for him; there were some cases where I did so; probably during the time I was there there were fifty such instances.

Q. In whatever you did before the surrogate, was there ever any objection raised by other lawyers? A. Never; I appeared before him in considerable many cases as attorney, and acted as such, and they never showed any feeling in regard to it, or made any objection in the least; I never dreamed there was such a thought in the community.

Q. You did some little practice in the county court? A. I did, sir.

Q. Ever any objection raised by anybody to your appearing there? A. No, sir; no objection or any complaint from anybody.

Q. Whatever you have done has been openly done? A. Yes, sir, entirely so; I have frequently been appointed referee to take evidence in the county court, at the request of various attorneys.

Q. Do you remember any thing about the case of Robert Knowles? A. I do; I drew all the papers in that matter; I drew the papers for the proof of the will, and citation and proof of service.

Mr. DICKINSON — What charge is that?

Mr. E. H. PRINDLE — Forty-third.

Q. What do you recollect in relation to the payment of money in that case? A. It was paid a great while after the will was proved; during the interim between the proof of the will and the payment of the money; I drew papers for the appointment of a guardian, I think over two infants in the matter; I made no charge for that; I have a book there which contains that charge where I charged it to the executor, and it seems to me that he came there during my absence, to pay the money, and paid it to Judge Prindle; Judge Prindle marked it upon my book as paid, and paid me the money afterward.

By Mr. STANTON:

Q. How much was it? A. Twenty-five dollars; no, I think it is more.

Mr. E. H. PRINDLE — Twenty-seven dollars and a half the book shows.

WITNESS — The books shows; he paid me the amount which appears upon the book; Wm. Browning, executor of the will of Robert Knowles; $27.50, that is the amount.

By Mr. E. H. PRINDLE:

Q. Do you remember any thing about the Humphrey estate? A. The time that the letters were issued on that estate I left very early in the morning and went to Otselic; I was engaged there all day in taking the evidence of a sick man in supplemental proceedings; I went that evening; Judge Prindle at that time was away at Cortland, I remember distinctly; I went that evening down the river to where he who is now my father-in-law lives; I was there till about ten o'clock in the evening, and returned to Norwich

by one o'clock at night; I was boarding at the Eagle Hotel and I attended a party at Mr. Hughson's, and I know it used up all night.

Q. Did Mr. Humphrey pay you any money at that time? A. No, sir; he did not see me that day at all.

Q. Have you looked at the letters of administration that were issued then? A. Yes, sir.

Q. And the record of the letters? A. Yes, sir.

Q. In whose handwriting are they? A. Mr. Merrill's; the final accounting shows there was so much paid at the surrogate's office; I didn't look at the time I made up the accounting to see whether it was right or wrong; I took it for granted that it was; I put that item into the account and he swore to it; he came there to have a final accounting; I drew his petition for the final accounting; at the time that I did that I told him that I wanted his account and receipts, etc., so I could draw up the account; he said he should be over in a short time to make application to be appointed guardian; between that time and the time when the final accounting was to take place, he came over and made application to be appointed guardian; I drew the papers for him and made no extra charge; at that time he left his account and papers; I went to work on his account and figured it all out and he came over on the day of the final settlement, and I figured up the matter and drew his account; I made a statement of it; he said he wanted a statement of the accounts and the amount due, etc., to show to those interested; and I made one out; I signed Judge Prindle's name to it; I forget whether Judge Prindle was in the surrogate's office or at his house, but he was around somewheres; when I got the statement made out I signed his name to it, either by me, or else didn't say any thing about that, but I intended it should show to those interested that it came from the surrogate's office, and was correct; the amount I paid Mr. Humphrey, on the final settlement, was not $40, but it was $30.

By Judge PRINDLE:

Q. The amount he paid you? A. Yes, sir; the amount was not $40, but $30; that is what I charged him and what he paid.

Q. (Showing paper). So put in the final account there, isn't it? A. Yes, sir; the charges on the final settlement were $30, and so put in the final account and sworn to.

By Mr. E. H. PRINDLE:

Q. Do you recollect how you came to sign the Ira Watson receipt "for H. G. Prindle?" A. I don't think it reads "for H. G. Prindle."

Mr. STANTON — The Ferguson estate is this?

Mr. E. H. PRINDLE — Yes, sir.

WITNESS — I think Judge Prindle told him how much to pay me for my services as special guardian in this matter on the statements and other services in addition to that; when I gave the receipt I signed my name to it alone and he objected to taking it; he said the surrogate took it, and Judge Prindle was the surrogate, and he did not employ me, and he wanted a receipt from the surrogate; I told him that the money was not for the surrogate, and that the surrogate was not the special guardian; he said that the surrogate told him to pay it, and that he didn't know me; I told him the receipt would not be any better with Judge Prindle's name upon it; that I had no authority; I finally told him if he wanted a receipt with his name upon it I would give it to him; I told him it was not good, for it was without any authority; but he insisted upon it and I finally gave it to him; I think the receipt expresses upon its face what it is.

Mr. E. H. PRINDLE—There may be some other matters that I do not now recall to which I may desire to call his attention; I am very much exhausted myself, and the other side may proceed with the cross-examination.

Cross-examination by Mr. STANTON:

Q. Under what arrangement did you first commence as a student in the office of Judge Prindle? A. I met Elizur H. Prindle on the street and he spoke to him about it; I afterward went into the office, and I think Judge Prindle sat at the table writing, and Elizur Prindle stood by the stove; he had just got his overcoat on; it wasn't an overcoat, it was one of these cloaks; he was going away somewhere; I asked him if he had concluded that I could come in; he said he had; he said I could come in and try it; he said he didn't think I would stay a great while; he asked me when I was coming, and I told him I was going over home for a week, and then I should be back.

Q. Those minutiæ are not important; state the arrangement you made upon going into the office? A. I made no arrangement further than that; I asked him if I could come in there and read

law, and he said I could; that was all the arrangement that was made.

Q. You went into the surrogate's office then? A. The 20th of March, 1866.

Q. Mr. E. H. Prindle was then occupying the same office with the judge? A. Yes, sir; substantially.

Q. And you went into the office with both of them? A. I did.

Q. That is the office belonging to the county? A. I suppose it is; I always understood it so.

Q. Now, sir, how long did you remain there without any further arrangement than you say had already been made? A. Than I have already stated?

Q. Yes. A. I staid there without any further arrangement up to the time I left, with this additional arrangement: During the time Judge Prindle saw that I was what he called a fair penman, and he stated that he had wills that he wanted recorded, and if I would do it, he would pay me for it; and whatever work he gave me to do in that line he paid me for it; sometimes I did other copying for which he paid me.

Q. When was that arrangement made between you and Judge Prindle? A. Why, I presume that he hired me to do copying before I had been in there a week; I did copying for most every lawyer in town; I could not specify any time.

Q. Do you mean to say that every time you did copying in that office that you had a special bargain then with the judge? A. No, sir; I do not.

Q. Then you acted as his clerk, doing this writing, under a general understanding that you should do writing and he would pay you for it? A. No, sir; when he wanted writing done he called my attention to it; I would take hold and do it and then he would pay me for it; just as other people bargain.

Q. There was a spell when you were hired by him by the week, was there not? A. I think there was a month or two he told me he would give me three dollars a week to do the writing; while I was a student in the office.

Q. When was that arrangement made? A. Well, I think it was some time during the year 1866, but it did not continue but a very short time.

Q. How long did it continue? A. It didn't continue to exceed three months, and I don't think it did two.

Q. You were admitted to the bar in the fall of 1867? A. I was, sir.

Q. Did you not state publicly, in Plymouth, that at the time you were admitted to the bar you were then employed by Judge Prindle by the week? A. No, sir-ee.

Q. You did not? A. No, sir.

Q. But you say that whenever the judge wanted any writing done he told you to do it, and you went and did it? A. He didn't tell me to do it; he asked me if I would do it.

Q. He called your attention to it? A. He called my attention to it, and I would do it and he would pay me.

Q. In that manner you did the writing in Judge Prindle's office, the principal part of it; from the time you entered the office up to the first day of January last, did you not? A. No, sir.

Q. You did not? A. No, sir.

Q. State what time you did do the principal part of the judge's clerical work? A. During the time that I was in the office; from the time I entered it up until the time I was admitted except when he had other students there, I did the principal part of it; since that time the greater part of it has been done by persons outside of the office, or students that he had in there; nice writing, that he wanted done very nicely, I have done.

Q. Now, sir, haven't you written nearly all the records of the office since you were admitted as attorney at law up to the first day of January last? A. No, sir.

Q. How many of the letters testamentary have you recorded during that time? A. I have recorded since the time I was admitted up until last September; I have recorded of letters testamentary about two-thirds; of the letters of administration a little more than half.

Q. Who has done the most of the other recording? A. Judge Prindle, Fred. Merrill, James Scott and Mr. Wilcox; Judge Prindle did most of it himself, because he wanted it done very plainly and well.

Q. Now, sir, at the time that Judge Prindle was absent from his office, who usually attended to the surrogate's duties? A. When he was gone away to be absent any length of time, when there was no one else there, I usually did it myself.

Q. When any one came into the office during this time, from the time you first entered it until you left, or about the first day of January last, and inquired for the surrogate, was it not your habit to say, "if you have any matters to transact of that kind, I will attend to them for you?" A. I usually asked them what their business was, and if it was any thing I had authority from Judge Prindle to do or

could do, I would tell them that I could do it for them, and save them coming again.

Q. State what you had authority to do in the absence of Judge Prindle? A. In the absence of Judge Prindle, when he went away and stayed away any length of time, I never had any authority to do any thing when he was in town, or simply gone for an hour or two, but when he was going to be gone a whole day, or two or three days, I had authority, that if a man came there with his papers drawn, or if he came there without them drawn and I drew the papers, I had authority to issue letters of administration, and to issue citations to prove wills.

Q. Any thing more, sir? A. I don't recollect any thing more now.

Q. You very frequently, then, issued letters of administration, in the absence of Judge Prindle? A. I did it occasionally.

Q. Did you ever take the proof of a will in the absence of Judge Prindle? A. Never.

Q. You had no authority to do that? A. No, sir; it cannot be done even by the surrogate's clerk.

Q. Did you ever draw any money from the county as clerk hire? A. No, sir.

Q. Did you ever have a dollar of the money drawn from the county as clerk hire, paid you? A. I don't know, sir; I had money from Judge Prindle before I was admitted.

Q. Before you were admitted to the bar? A. Yes sir, a good deal of it; he paid me for writing; where he got it I don't know.

Q. Since you were admitted to the bar, in the fall of 1867, you have not received any? A. No, sir.

Q. Who has been the surrogate's clerk from that time up to the first of July last? A. James G. Thomson.

Q. That is all the clerk he has had, is it? A. That is all the legal clerk he has had; he has had students in there.

Q. Did James G. Thomson ever do any work in the surrogate's office? A. Recording, do you mean?

Q. Yes; any clerical duties of the surrogate's office? A. No; not unless it was in some special case; I don't remember now.

Q. Did you ever know of his doing the surrogate's work in the surrogate's office? A. Recording there, do you mean; yes, sir, I have known him to do work as surrogate's clerk in the surrogate's office.

Q. Well, what was it? A. Well, I have known him as many as a hundred times to come in the surrogate's office and examine

records and make certificates of letters of guardianship having issued, letters of administration having issued, and things of that kind.

Q. Was there any talk between you and Judge Prindle why James G. Thomson was so appointed? A. Never a word said.

Q. Did you ever have a talk with Judge Prindle in reference to your own appointment as surrogate's clerk? A. I did, sir.

Q. When was that? A. Since the board of supervisors last fall passed a resolution that thereafter no lawyer should occupy the surrogate's office. They passed a further resolution; something about the pay; Judge Prindle told me that he would like to appoint me to be clerk; I told him I wouldn't do it.

Q. Did you have any conversation with him on that subject previous to that time? A. Never, sir.

Q. You continued to occupy the office, notwithstanding this resolution of the board of supervisors, up to what time? A. I didn't continue to occupy it.

Q. You did not? A. No, sir.

Q. Did you have any other office? A. No; I didn't have any other.

Q. Haven't you already sworn upon your direct examination that you did continue there? A. Well, I said that my books and papers remained there, but I didn't stay there, not one-tenth part of the time; I was at my house, or else in the offices of other lawyers; if I had any business on hand to transact, why, I would go there.

Q. How did you get your pay for this clerical work that you testified you did for Judge Prindle, since you were admitted to the bar? A. The only pay I got was, I didn't pay any office rent to the county.

Q. Neither did Judge Prindle, did he? A. Not that I know of.

Q. Then you never got a cent of pay for this clerical work that you did, except as you charged parties who came in there to transact business with the surrogate, for your services? A. I got my office-rent, and I warmed by the same fire.

Q. I ask you if you got any other pay except your office-rent and the use of the office, if you got any other pay than that except what you obtained by charging parties who came into the surrogate's office for your services? A. For my clerical duties do you mean?

Q. Yes, for your clerical work for Judge Prindle? A. Well, I desire to explain.

Q. Answer my question? A. Well, you put your question in such a way that if I should answer it "No," you would make me substantially swear that in charging my bills for those services, I charged them for performing these clerical duties; which is not the fact.

Q. You never charged anybody for performing these clerical duties? A. Never, sir, one cent; any man that had his papers drawn never paid me a cent for it.

Q. Then you never got any other pay for this clerical work that you did for Judge Prindle than your use of the office, and the opportunities you had for transacting business there as an attorney at law? A. That is all.

Q. Judge Prindle, you say, had several students while you were there in the office? A. Three or four, I think, that I remember.

Q. Can you tell their names? A. Well, there was George Thomas, Frederick Merrill —

Q. How long was Merrill in there? A. Merrill was there a year, certain.

Q. Steadily? A. He was there every day during the time, I think; he might have been absent some days; he was there steady during that time.

Q. Who else? A. Fred. Wilcox.

Q. How long was he in there? A. I can't tell you now; I think five or six months.

Q. Who else? A. When I went there, there was a young man by the name of Hoag in the office.

Q. Do you know how long he was there? A. After that?

Q. He was not there after you were admitted to the bar, was he? A. No, sir.

Q. Was Wilcox there after you were admitted to the bar? A. I think he was; yes, sir, I am positive.

Q. This Merrill was in there the longest time of any of them, wasn't he? A. My recollection is that he was.

Q. He is the man who was sworn as a witness here? A. I didn't see him swearing; I understand he has been sworn.

Q. He was a very poor writer, wasn't he? A. He was a fair writer.

Q. He wrote with his left hand? A. He wrote with his left hand; he was a fair writer.

Q. Was much of any clerical work done by him while he was there? A. I have counted in the records of surrogate's office over a thousand folios done by him when he was there.

Q. What sort of records? A. Miscellaneous records; where all the actual labor of the surrogate's office is, is in the miscellaneous records of wills; that is where the labor lies; I have also counted the folios of writing done by me, as sworn to here by the witnesses, which, all told, is less than one hundred folios.

Q. Were you present in the office at the time this investigation was made by certain gentlemen of the charges made against Judge Prindle? A. I was.

Q. All the while? A. Not all the while; part of the time.

Q. By whom was that report written? A. I do not know, sir; I can tell you who was there; I had nothing to do with the drawing of the report; I didn't draw it, nor touch it; it was drawn I suppose, by some of the legal gentlemen present.

Q. Did you see it drawn? A. No, sir; I did not; I saw all these legal gentlemen writing and taking notes and memorandums; who drew it I don't know.

Q. You say there has not been any attorney in that office since the first day of January? A. Not to make that his office.

Q. Do I understand you to say that there has been quite a reform in the administration of that office since that time? A. I may say this, that Judge Prindle has not had any attorney there; that he don't allow papers to be drawn in his office of this character.

By Mr. E. H. PRINDLE:

Q. And charge for it? A. And charge for it; sometimes his clerk does it, or he does it himself to accommodate some particular friend; I understand he don't admit it to be his duty to do it.

Q. You say you figured up your receipts from that office during the year 1871; between what dates? A. The 1st of January, 1871, and the same day in the fore part of October.

Q. How much did you say you received altogether? A. Between $400 and $500.

Q. That was your total receipts from that business in the surrogate's office, was it? A. It was; surrogate business.

Q. What do you call "surrogate business?" A. I mean business pertaining to the surrogate's court that was performed during that time; there may have been bills for services performed outside of that year that were paid me; quite likely there were; I didn't take that into the estimate, but it was the business there during that time, and the charges made, and the money received that pertained to that year.

Q. Did I understand you to say, on your direct examination, that you were not in the office there after August to transact any business? A. I don't mean to be understood that way; I was in the office there frequently, and transacted business closing up old matters; but to make that my office, I did not.

Q. Not after August? A. August, 1871, you mean?

Q. Yes. A. I quit doing business as I had done before, just as soon as that question came up; I drew papers in there and did business, but yet I stopped doing any thing as I had done it before; I stopped writing in the surrogate's books, unless it was on some extra occasion perhaps; occasionally I did it.

Q. You say that the years preceding 1871, you received less than you did that year? A. Unless it was one year; one year I think it exceeded that amount.

Q. Can you tell us what year that was? A. Well, I don't know; I think 1869 or 1870; I guess 1870.

Q. How much was it during that year? A. I think the charges and all figured up about $700.

Q. How much was it the year before that? A. It was less than $500.

Q. And how much the year before that? A. Well, I can't tell you; I have no means of knowing.

Q. Now do you mean to swear, Mr. Ray, that all the money paid into Judge Prindle's hands, in your absence, you know was paid over to you? A. I know that the sum sworn to here; Judge Prindle may, for aught I know, sometimes have charged parties money, and received it, which he did not pay me.

Q. That is an answer to the question, sir? A. But I mean to say this, that all the sums of money sworn to here as paid Judge Prindle, with one or two exceptions, have been paid me.

Q. What exceptions were those? A. Well, I think now of the McDonough case, Daniel O. Gale.

Q. That $10 never was paid to you? A. No, sir.

Q. What other cases? A. I don't know of any now.

Q. Do you mean to say that in the case of Adelaide E. Parker's estate, $10 was paid to you? A. Yes, sir.

Q. Who was it paid to you by? A. Judge Prindle.

Q. Do you mean to state that you did the writing in that case? A. I did a part of it.

Q. What part of it? A. I think I drew the petitions.

Q. Do you know that you drew the petitions? A. I am certain of it; I have seen the petitions since.

Q. Have you got the petitions here? A. They are in my handwriting; they would not have been in my handwriting if they had not been drawn by me.

Q. Did Mr. Parker ever employ you in the matter? A. Mr. Parker said that he did not; I would not say that he did.

Q. At whose request did you draw these papers? A. I drew them at Judge Prindle's request, I presume.

Q. At whose request have you done most of the business that you have done in the surrogate's office? A. At the request of the parties coming there; Judge Prindle almost invariably said to those parties coming there, "it is not my duty to draw these papers; Ray is here, he is a young lawyer, and he will do it for you," that is, I mean, unless parties came directly to me.

Q. That was the usual course, that parties went to Judge Prindle and he says, "here is Mr. Ray, he is a young lawyer and he will do it for you?" A. That was the usual course when they did not come to me directly, but in the great majority of cases, nineteen out of twenty, they came to me directly.

Q. You acted as special guardian in a great many cases, you said? A. I did.

Q. You acted as special guardian in a great many cases where you were also attorney for the adverse party, did you not? A. No, sir.

Q. You never did? A. Well, sir, let me explain the way I understand it.

Q. Will you answer the question? A. Well, I will say "no" to the question, then.

By Mr. E. H. PRINDLE:

Q. Now make your explanation? A. I would say this, Mr. Stanton: it was not one case in five, no, not one in ten, where I appeared and acted as a special guardian, that I ever received or charged a cent.

By Mr. STANTON:

Q. Did you receive any portion of the money in the case of the Milner estate? A. I received $20 of Judge Prindle, sir, for my services in that matter.

Q. You received only $20? A. I received only $20 for my services.

Q. Who did you receive that from? A. I received that from Judge Prindle.

Q. You were employed, you say, by Mr. Barrows, in the matter of the estate of Anna Barrows; you were employed by Mr. Barrows, executor? A. Yes, sir.

Q. In the whole matter, you say, of the estate, granting letters and proof of the will? A. There was no granting letters particularly about it; the proof of the will, he came there to have it done; he was a stranger to me then, and I can't tell how he came to employ me, or get me to do it, but I did the work; but that don't make any difference; I didn't get any pay for that work, to say the least; I sent him citations at the request of Judge Prindle; I drew the papers at the request of Judge Prindle in the matter; Mr. Prindle saying to Mr. Barrows, that he had better have me do it; Judge Prindle told him he would have the citations sent to him; Judge Prindle requested me to do it, and I did.

Q. You have stated that you appeared as attorney for all of the defendants in the action which Judge Prindle brought? A. I did, sir.

Q. At whose request did you appear as attorney? A. I appeared at the request of all the defendants.

Q. How did you get that request? A. I got it in writing.

Q. From whom? A. Those requests?

Q. Yes, sir. A. Some of them were sent down by Mr. Barrows; some were brought down by Mr. Barrows; some of them came directly from the parties themselves.

Q. Have you got those written statements of authority here? A. I have, sir.

Q. Will you produce them? A. Yes, sir.

Mr. MYGATT — Would you like to have the witness read all these papers?

Mr. STANTON — I don't know; I would like to see what they are, first.

The WITNESS — I want to be sure you take them all, and I will know that I will get them back, for I will know where they are gone.

Mr. MYGATT — Do you want these papers in evidence?

Mr. E. H. PRINDLE — We will put them in evidence; you don't want them.

Mr. STANTON — We are not particular about them.

The WITNESS — You knew I had these when you made that charge, Mr. Stanton.

Q. Your charge in that case for services upon the final accounting amounted to about fifty-eight dollars and some cents? A. No, sir;

I said it amounted to $50, and so put it in the account, and found it was not enough and I scratched it out and put it in just as it was, and that Mr. Barrows paid me; Judge Prindle made up to me; paid me $25 out of what he received.

Q. You reduced the amount of your charge because the estate was not large enough to pay it? A. Yes; it was fair; I couldn't get what they didn't have.

Q. How much did the land sell for? A. I wish to state, that out of that amount of money, that $50 charged, that I paid $30 for publication fee out of my own pocket, and paid a part of it a long time before; a publication fee in the State paper for citation of final settlement, $13.70, I think; there was a publication fee in the county paper of $4.50; publication of notice to creditors, $13.25, all of which was charged to me and all of which I paid out of that thirty-seven dollars and some cents that I got, and it was all included in that charge of $50; the account shows it.

Q. Didn't Mr. Barrows pays you more than the $34.57? A. No, sir.

Q. Didn't he pay you a small sum which was coming out of his own fees in the case? A. Not a cent; he declined to do it; he didn't decline; I didn't ask him to; but he said he didn't want to pay any thing out of his own pocket, for he hadn't got pay enough in the case already to satisfy him for his trouble, and I don't think he did; he was to a good deal of trouble and expense in the matter, and his commission was small compared to the work he did; I don't think he got too much pay.

Q. How did you come to be employed by the Eddys to appear for them in the matter? A. I think it was suggested by me.

Q. Suggested by you? A. I think so; no, I think not; I think it was suggested by Judge Prindle, that if some attorney could be obtained to appear for all the Eddys, it would save publication fee, and it would be no worse to the estate to pay a lawyer for services in the matter than it would be to pay it to the printers for publication fee, and we went to work then and got all these consents.

Q. Then you appeared for the Eddys at the suggestion of Judge Prindle, first getting their permission to appear? A. I think I said I got their permission; I did not appear at the suggestion of Judge Prindle.

Q. Did those Eddys pay you any thing for your services? A. No, sir; not a cent.

Q. Then your pay for services in this suit came from Judge Prindle? A. Yes, sir.

Q. How much did he pay you? A. Seventy-five dollars for my services in that suit as attorney for the Eddys.

Q. Were you at Cooperstown at the time that order was obtained at that term of court? A. I couldn't tell; I have been at Cooperstown at court.

Q. Do you know whether you went over upon the occasion of the obtaining of that order? A. I don't know; I couldn't tell.

Q. You don't know who went at that time? A. No, I don't know.

Q. You signed a stipulation in that matter with Judge Prindle for judgment to be entered? A. I stipulated for judgment.

Q. Did you pay any attention to that case subsequent to that time; subsequent to the signing of that stipulation? A. Yes, sir; I paid attention to that case all the way through, from beginning to end; I saw the judgment roll made up; I paid attention to the summons and complaint, and saw that every thing was what I considered proper and right.

Q. Did you take any measures to have the costs taxed in that case before the entry of judgment? A. No; I can tell you my reasons if you desire to know.

Q. I don't care particularly; you can state them if you desire. A. I didn't think it was a proper case for taxing costs; I thought it was a proper case for the court to fix the allowance.

Q. Did you notice the wording, that the allowance to the plaintiff's attorney should not exceed the sum of $350? A. I presume I did; I have no specific recollection of it now.

Q. When did you first look at that order in that case? A. When it was granted; about that time; I looked the judgment roll all over when it was filed in the county clerk's office.

Q. Were you present at the time the judgment was entered on that order in the clerk's office? A. I presume not.

Q. When did you see the judgment that was entered in that case; when did you first see it? A. I saw it when it was drawn up by Judge Prindle before he filed it in the county clerk's office; I can't say that I ever saw it again until last fall, during the campaign.

Q. You never took any measures to have any further action taken by the court in reference to the amount of costs granted to the plaintiff's attorney in that case after the fixing of the order? A. No.

Q. You never paid any further attention to that part of it? A. I considered it, for all the costs to me, and Judge Prindle, and for all the costs and trouble in the matter, fair and honest; Mr. Barrows thought it was fair, and he said he was willing it should go so.

Q. Who was Mr. Barrows? A. The plaintiff in the case.

Q. I didn't understand the name; what did the real estate sell for upon that? A. I think it was $1,000; I think that was the deed.

Q. Did you ever write or inform the parties who employed you, or any of these Eddys, as to the amount of the costs that were fixed in that case? A. I wouldn't swear that I ever did.

Q. Did you ever have any communication with any of those Eddys, subsequent to the time when you were authorized to appear for them? A. Yes, sir.

Q. What ones? A. I couldn't specify now, but some of them were at Norwich; one or two of them from Columbus; I passed letters with the religious societies in New York city, and besides two or three letters between us back and forth; I think I am correct when I state Lathrop S. Barrows was at Norwich once subsequent to that time, but wouldn't dare swear now; it is a good while ago, and the matter of it passed from my recollection at the time, and it was called up last fall, and I am liable to be mistaken.

Q. In this case of John Murphy — you say that Murphy offered you $150 if you would get Dr. Dwight to resign? A. Yes, sir.

Q. Where was that arrangement made? A. There was no arrangement made; I declined to do any thing of the kind.

Q. Where was the offer made? A. In the back room of the surrogate's office.

Q. Who was present when it was made? A. Nobody.

Q. No one but you and Murphy? A. No, sir.

Q. What reply did you make to John Murphy when that proposition was made to you? A. I told him I wouldn't do it; that I was acting for the executor, but I told him substantially (I don't pretend to repeat the language) that I would see Dr. Dwight, and if any arrangement could be made I was willing to do it to protect his interests and let him have the control of the property; I told him I didn't think as long as he persisted in making any such charges that he could get Dr. Dwight to renounce.

Q. You recollect the time Judge Prindle went out to collect five dollars more of John Murphy? A. I think I do, Mr. Stanton; I would not swear that any such transaction took place.

Q. You have already sworn to it on your direct examination? A. I swore according to my best recollection, and believe I am about positive; but if Judge Prindle should swear that he didn't, I should think I might be mistaken, but I believe that it did; my recollection is he spoke to me about the five dollar stamp that he put upon the letters, and wanted to know if I collected it, and I

told him no, and he wanted to know how long he had been gone, and was afraid he had gone out of town, and went out of the office.

Q. You collected $75? A. Yes, sir; I ought to have collected more, I think.

Q. How much did you say that you received of him on account of your services in the case of the Charles E. Jacobs estate? A. We said this: That my account book says $6; I know that Judge Prindle paid me; we made a mistake; I know Judge Prindle passed me every cent of money, together with the dollar stamp.

Q. Passed you every cent of the money; what do you mean by that? A. That Mr. Todd gave him.

Q. How do you know that? A. Because I saw it done; Judge Prindle said, I cannot give you the precise amount of money; Judge Prindle says, I could allow the special guardian in this case $10; but I will not do it; he says, give him so much money and call it all right, or call it square, or words to that effect, and Mr. Todd gave him some money; laid it on the desk and Judge Prindle picked it up and laid it on the desk in front of me.

Q. You think you know the amount better than Todd? A. No; I think if Mr. Todd swears he paid Judge Prindle $8.75, I think Todd is correct, and I think I made a mistake when I came to make the memorandum in my book.

Q. You think you must have received more than you credited Judge Prindle? A. I didn't credit Judge Prindle with a cent; I credited Mr. Todd with the money; it was not paid to Judge Prindle, only for me.

Q. You say Judge Prindle told Mr. Todd there were no fees that he was entitled to? A. Yes, sir; he told him there was no fees expressly at all.

Q. Have you ever heard the mattter talked over previous to that time by Judge Prindle, or in his presence, that he was not entitled to any fees as surrogate? A. Have I ever heard it talked?

Q In the presence of Judge Prindle previous to that time, that he was not entitled to any fees as surrogate? A. Talked by who?

Q. By any one in his presence? A. I have heard parties a great many times introduce that subject before him, and heard him tell them he was not entitled to any fees; that fees were abolished.

Q. About when was the earliest time you heard any thing of that kind? A. Soon after fees were abolished in '67; we didn't get the news of it at the surrogate's office until some little time after that.

Q. About what time after that? A. I think the first knowledge Judge Prindle had that fees were abolished was along in July some time; June or July; and then this question came up and was discussed by Judge Prindle and the lawyers throughout the county; the act abolishing fees read like this, if I am not mistaken: "From and after the passage of this act no surrogate shall charge or receive any fees for any official services performed by him." It was a question with Judge Prindle whether or not that statute was not worded with express reference to the fact that surrogates should be allowed to charge for services performed by them not official; he consulted various lawyers in the county; some were of the opinion and advised him that he could; all papers not official; that he could draw them and charge fees for it just the same as though there was no such act.

Q. Give the name of that attorney? A. I remember Solomon Bundy stating that to Judge Prindle; Bundy says to Judge Prindle I should be afraid to do it, for there might be a question over it.

Q. Then he didn't advise him he had a right to? A. I say he did; that that was his understanding of that law, but yet he told Judge Prindle he should be afraid to do it, for, said he, there may be a question over it.

Q. What other attorney advised him in that way; what did Judge Prindle say in reply to that? A. Judge Prindle told him that he had never done it and never should do it; that he shouldn't dare do such a thing.

Q. As to charge any fees whatever? A. As to charge for draw ing papers.

Q. About when was that conversation?

By Mr. PECKHAM:

Q. Did you say he never had done it? A. He said he never had made a practice of doing it; I think Judge Prindle has, in one or two instances, violated the statute in that respect.

Q. About what time did that conversation occur that you stated? A. It is sometime in the summer of 1867; it was after we got the Session Laws which contained the act, and the question came up and was talked and discussed.

Q. Give us, as definitely as you can, the time when you received knowledge at the surrogate's office of the passage of this act? A. It was not until the Session Laws came out, sometime during the summer.

Q. Do you think the month of July? A. July or August; it might have been earlier.

Q. Up to that time Judge Prindle continued to charge the fees that he had previously charged? A. No, sir; Judge Prindle had had some information, some talk; he had seen something in the papers, that there was such an act.

Mr. E. H. PRINDLE—Let me call your attention to one fact, that I was in the convention and ascertained the fact, and wrote him a letter; I don't know whether Mr. Ray knew it or not; that was the first information he had about it; that was the fact, quite likely.

Mr. STANTON—Can you tell the date of the letter you wrote him?

Mr. E. H. PRINDLE—I couldn't; I was in the convention, and the judge from Herkimer county, Judge Graves, who was a member of the convention, was speaking of the act; that was the first I knew about it; I couldn't tell the date; it was along in the spring, and I sat down at once and wrote a letter to Judge Prindle, telling him of that act, and I think I sent him a copy of it; I won't be sure.

Q. Can you tell up to what time the judge charged this regular fee of $13.50 on the proof of a will; it was the custom to charge that? A. I say I presume so; I didn't know any thing about his charges.

Q. Up to what time did he continue to charge those fees? A. I couldn't give the date; but I will tell you this fact, Judge Prindle knew something about it, or there was some talk that there was such an act before the Legislature, or something being done about it, and Judge Prindle stopped taking fees; told them to wait, in an estate that he knew was good and men that he knew; he let the thing run; there were several estates he didn't take fees in, and I think there were two or three estates where perhaps he may have taken fees, when, in fact, perhaps, they were abolished before he learned of the fact.

Q. Where he thought there might be some doubts about getting the fee, he took the fee? A. Not after he knew the fee was abolished.

Q. Before you got the statutes? A. There may have been such cases; I couldn't specify any now.

Q. Can you tell the amount that the judge was in the habit of charging for blanks, under this resolution of the board of supervisors? A. I cannot.

Q. You don't know the amount of it? A. I don't know the amount; I never knew of such a resolution, I think, until I heard it read here the other day.

Q. You figured the fees in several cases during the campaign, that you charged for proof of a will? A. I knew $13.50 was what they said the fees were.

Q. How much was it the judge claimed during the campaign that the regular fees were for proving a will? A. I don't know what he claimed; I know what I claimed, $13.50; it was conceded that was the amount.

Q. Do you know what the judge claimed was the regular fee on granting letters of administration, including stamp; including blank? A. Five dollars.

Q. Are you sure it wasn't six, besides blanks? A. I always did my figuring on the basis of five dollars.

Q. How much on granting letters of guardianship? A. I think three.

Q. Nothing for blanks? A. No; I don't know what Judge Prindle did; I know I didn't figure on that basis.

Q. Do you recollect receiving the letter from Mr. White, the executor of the Bennett estate? A. I didn't receive it; it was handed to me I think by Dr. Prindle; it was in the absence of Judge Prindle.

Q. The letter came to Judge Prindle himself, from White? A. I think it did.

Q. You made out the papers, and sent them back to White? A. I did.

Q. In answer to the letters? A. I knew he wanted it, and he said he wanted it right along, and Judge Prindle was away and wasn't going to be home for some days.

Q. Was that one of the things you were authorized to do? A. No; that was done under the authority of the clerk of the surrogate's court, Thompson; I took the papers to him, and he or his sub-clerk assisted me in preparing them and made the certificate and they were sent on.

Q. Under whose authority were the charges made for the papers sent? A. Under my own and nobody else; I am responsible for that charge, for Judge Prindle did not know any thing about it.

Q. You didn't pay any regard to the amount of the legal fee provided by law? A. It was worth more to count every word in that long string of papers; it was worth about as much as to make the papers, and I thought $10 wasn't too much; I thought it was worth it, getting the certificate and every thing proper, and I made out the bill.

Q. You ever count that up particularly since, to ascertain how much the legal fee would be? A. Yes, sir.

Q. How many folios did you find in the papers? A. Over 100; that is, I have estimated it.

Q. How much over 100? A. About 130, I think; I don't know but there was more.

Q. About what part of that was written? A. About one-third perhaps printed, and the rest written; all the orders came out of books there were no blanks for; that had to be written out in full; I called the will five folios, and there was nearly six of it; I had to write the petition out in full, for the reason the original petition was on the old blank and didn't accord with the new blanks, and I had to write that out in full; I recollect that distinctly.

Q. You don't claim that you were employed by the executor of the Burdick estate? A. Not except what I have stated in regard to it constitutes an employment.

Q. He came into the office, and what occurred? A. He was notified it was the surrogate's business to draw those papers, and attend to the mailing of the citations.

Q. Who did the judge refer him to? A. I presume he referred him to me; I cannot remember distinctly; it seems to me I do too; my best recollection is that he did refer him to me, and Mr. Lane was there, and Mr. Craft both.

Q. Did you ever claim that you were ever employed as attorney at law by Craft, the executor of that estate? A. No, sir; I don't claim I was engaged or employed as an attorney at law, perhaps, by any of these men, for I understand that attorneys at law are unknown in surrogates' courts; there is no such thing known in surrogates' courts.

Q. Judge Prindle himself drew a part of the papers in that case? A. He commenced the petition; I think he filled the affidavit.

Q. What papers did he draw? A. It was a part of the petition; then after Judge Prindle went away, spent as much as two hours in getting at the heirs, and relationship, and residences, and finally, when we got all through, we didn't get it right, and after I sent on a citation he wrote me a letter changing it, and I had to go to work and fix over a new citation.

Q. The judge was anxious to go away or had to go away? A. I don't know as he was anxious; he went away.

Q. He had the executor make an affidavit to the petition, to be written in, after he was away, by you? A. I don't know that he did that.

Q. Isn't that the way I understood your evidence? A. I don't know but the affidavit was made afterward and swore to before Judge Prindle.

Q. Didn't I understand you to say the affidavit was filled out and sworn to, and that it was the understanding you were to fill it in afterward? A. That I was to write in the facts.

Q. Write in the facts afterward; isn't that the way the business was transacted? A. I don't know but it was, but I wouldn't be sure whether that affidavit was sworn to before or after the petition was made out; my memory is, there was a court there at that time, or some legal proceeding at the court-house, and I think I am positive in regard to that; there was a court or some legal proceeding at the court-house, in which Judge Prindle was acting as judge, and he had got to go to the court house; that is the way the facts were; he told them it wasn't his business to do it at all, and I know I filled out the petition, or had it filled out.

Q. You say that Furman swore the estate was worth $2,000 in the petition? A. That was what it was put in the petition.

Q. Read it and see if it states that? (Handing the witness a paper.) A. That the real and personal estate didn't exceed the sum of $2,000.

Q. He didn't swear absolutely that it was $2,000? A. No, sir; no man could.

Q. Then you are mistaken about that? A. I can tell you just how that thing is always done.

Q. We have already had that? A. No.

Mr. PECKHAM — We haven't asked you for it now, and we don't want it.

Q. How much money was paid to you by Judge Prindle in the Trask estate? A. The Almon Trask estate?

Q. Yes, sir. A. Bradley Gregory, executor?

Q. Yes, sir. A. My charge was $35; I got $25; I remember that distinctly.

Q. Has Gregory had a final settlement of that estate? A. No.

Q. You gave Gregory a receipt? A. I don't remember that I ever did; the money wasn't to pay me, it was paid to Judge Prindle.

Q. You never gave him a receipt for it? A. I don't remember that I ever did.

Q. What was that charge for? A. For services on the proof of the will and counsel fee.

Q. Counsel fee in what matter, in connection with the estate? A. Well, you may put it that alone if you want to; I made him no extra charge for searching of the will, and counsel fee in regard to other matters; put it at $35, and Judge Prindle collected the twenty-five and said, "let it go at that," that "that was enough," and paid it to me.

Q. The judge assumed to regulate your fees in that matter? A. In regard to the estates he did.

Q. The fees you have charged in this case have been regulated by Judge Prindle mostly? A. Sometimes they have.

Q. Have they mostly? A. On final settlement I think always, or nearly always, and in regard to the proof of wills, they haven't been regulated, probably not one case in ten; that is the only case that I remember of where he made any regulations, and that is the only regulation he made in regard to that; but on the final settlements he always reviewed the whole thing, and if I had charged what he thought too much on the proof of the will, or granting letters of administration, he cut me down on the final settlement.

Q. Can you tell a case where he ever cut you down on final settlement? A. Yes, sir, the Sylvester Benton estate was one that he cut me down on.

Q. How much did you charge in that? A. I don't know; I think it was $30, and I think he paid me $20.

Q. How long were you engaged in it? A. In the settlement of the estate?

Q. Yes, sir. A. Three days.

Q. Was there a long account in that case? A. Well, the account was not so long as it took to get the account in shape; it is not the mere drawing of the account that makes the work on a final settlement; it is the getting of the facts and figures in shape; the mere writing of the account isn't worth more than $2, perhaps.

Q. Do you claim that you were employed by Mr. Eddy in the Eddy estate? A. Yes, sir, I do; both Mr. Eddy and Mr. Emmerson understood it well; I was expressly employed; Judge Prindle was not in the office, and Mr. Eddy didn't pass a word with him about it.

Q. Mr. Eddy went into the office to see Judge Prindle, didn't he? A. I don't know what he came there for, only as he stated it there.

Q. That money was not paid to you, was it, by Mr. Eddy? A. Yes, sir, paid directly to me; Judge Prindle was not there when it was paid.

Q. Was Judge Prindle there at any time during the time Mr. Eddy was there on this business? A. No, sir.

Q. Then Mr. Eddy and Judge Prindle were not there at any time together? A. No, sir, at no time; possibly I might have been at the table writing and Mr. Eddy might have passed into the office before Judge Prindle went out and I not have seen him; but the witnesses came and Mr. Eddy was not with them; the will was proved in the forenoon; admitted to probate; Judge Prindle made all the orders; there were some papers that I was making out that Judge Prindle had nothing to do with; and he went to his dinner; in the afternoon Judge Prindle did not come until three or four o'clock; Mr. Eddy came in, paid me the money, and took the papers and went away before Judge Prindle came to the office.

Q. Now, sir, your recollection in all these cases is so distinct that you are able to testify that an interview did occur between an executor and Judge Prindle with more certainty than the executor himself, who never transacted business at the office but once or twice? A. I am able to testify distinctly in regard to some of these transactions; I know the fact that the executors themselves, when they have testified, have either been mistaken or have misrepresented, willfully, one or two facts.

Q. These executors that have been sworn have not testified truthfully; that is what you mean? A. I don't say that they have *intentionally* testified to any thing that was not so; but I say that they have stated facts that did exist; I think that some of these persons have honestly supposed when I have done the business, when they have been referred in that way, and I have done the business for them and drawn the papers, perhaps they have honestly supposed that I was acting as surrogate's clerk.

Q. Don't you think, sir, that they have generally supposed that? A. No, sir.

Q. In these cases, sir, did you ever inform an executor or administrator, when he was referred to you by Judge Prindle, that you would charge him as an attorney at law for these services? A. Yes, sir.

Q. State what cases? A. In 'most every instance.

Q. You stated beforehand that you should charge them as an attorney at law? A. You wish me to confine myself to those cases in proof?

Q. Yes, sir. A. The Barrows estate is one; the Trask estate was another; Mr. Gregory understood it distinctly; I don't recall any other now.

Q. You don't think of any others where you informed them that you should charge them as an attorney? A. There don't any come to my mind now; if you call my attention to the parties, perhaps I could remember; I don't think that I have drawn the papers or took the papers to prove six wills in my life, take them all together, but what I have had an express agreement or talk with the executor beforehand as to what my charges would be, and he would ask me to make it as low as I could.

Q. I would rather have your evidence confined to the particular matters that I call your attention to; if you can name any more cases, please state them? A. If you will give me the charges I will look them over and state every one.

Q. Well, I have already asked you with reference to most of these estates; in the case of the Lewis estate, did you inform Mr. Brown, the executor? A. No, sir; he did not understand but what there were fees to be paid to the surrogate until he came to pay his bill; he then asked Judge Prindle what the fees were (so he informed me); Judge Prindle told him there were no fees, but he ought to pay me for drawing the papers; and he asked Judge Prindle how much he should pay me, and the judge said ten dollars would be about right.

Q. Your recollection about that is much more distinct than the recollection of the executor? A. It is, sir, for the reason that the executor has stated that he had Judge Prindle's receipt, and was just as positive about that as he was of any thing to which he testified, and afterward found that he had not Judge Prindle's receipt, but my receipt.

Q. Did you draw the preliminary papers in the Cassells estate? A. No, sir, I did not.

Q. Who drew those? A. Judge Prindle.

Q. Did you have any thing to do with the matter? A. Not until the final settlement, only that during the time within a few days or a week or two after the money was paid to Judge Prindle, he informed me of the transaction and paid me the money, telling me that he had agreed that I should do the whole business in the final settlement of the estate for that amount of money.

Q. Do you say that you read these receipts over to Mr. Coates, that you gave him? A. Yes, sir; and I read over the final account to him.

Q. You read the receipts over to him; you can swear to that positively? A. I can, sir.

Q. That was after election, wasn't it? A. Yes, sir.

Q. You fixed that up so that it would show in proper shape for the receipt of this $25 that the judge had received previously, did you? A. No, sir.

Q. How did you fix it? A. Well, I will show you how I "fixed" it; there was no fix about it; I wrote it in there and he swore to it; the citations were not made out by Judge Prindle, or the proof of the will, either; the papers themselves show that it was not done by him (referring to papers); I am mistaken in regard to that; here is a petition for final settlement.

By Mr. PECKHAM:

Q. Is it possible that you are mistaken about any thing? A. Yes, sir, I am mistaken in regard to that; I "fixed" the account in this way (reading from account as follows):

To paid Helen E. Coates her legacy as per will.....	$500 00
In addition to the above, I have paid the following expenses of settling the said estate:	
Expenses to Norwich and other places on business of estate..	4 70
County clerk's fees.....	1 00
Sherburne News, publishing notice to creditors to present their claims.....	13 50
Fees of witness to will	7 00
G. W. Ray, attorney, services, etc., at surrogate's office, drawing papers, etc., and attending the final accounting and settlement	19 35

Q. That is enough? A. There are other statements here in regard to it.

Q. Then this $25 that was taken previously by Judge Prindle—what does the account say in regard to that? A. It must have been paid on the 16th of December, 1870.

Q. And what time was this final accounting? A. The 20th of December, 1871.

Q. That $25 that had been paid more than a year before to Judge Prindle was decided at the time of giving the receipt, and two receipts given? A. Yes, sir.

Q. How were those receipts fixed? A. Why, they were written just as they read; I think one of them read, to Judge Prindle for the stamps.

Q. One of them was signed by the judge himself was it? A. I think so.

Q. And that was for the stamps? A. Those were for the legal

disbursements that the surrogate would make in the performance of his official duties.

Q. Did the judge sign the receipt, then, for just as much as it was proper for him to receive at that time? A. Yes, sir.

Q. And then you signed a receipt as coming from the hands of the judge for the remainder of the $25? A. I drew a receipt for the balance and stated in that receipt that it was received from H. G. Prindle.

Q. And those receipts were for that money that Judge Prindle had received, more than a year before that? A. Yes, sir; those receipts should have been attached to the account; that was the proper place for them; it was not intended that they should be taken away by the executor.

By Senator D. P. Wood:

Q. Was the money paid over to you by Judge Prindle at the time of the giving of the receipt by you; or had it been paid to you previously by the judge? A. To me previously by the judge; the money was paid to me, by Judge Prindle, a few days or a week or two after it was received by him; nearly a year before election came up, or before there was any talk about it.

By Mr. Stanton:

Q. How much money did he pay you that time? A. I can't swear positively.

Q. Well, sir, I would like to have you get at it as near as you can? A. It would be impossible for me to swear from recollection, anywhere within two or three dollars; it was something in the neighborhood of twenty or twenty-five dollars; may have been twenty-seven dollars, or may have been eighteen or nineteen dollars.

Q. In the Owens estate, were you employed by the executor?

A. Yes, sir.

Q. Who drew the papers? A. I did, sir; every one of them, I think.

Q. Who received the money for transacting the business? A. The money was paid to Judge Prindle, I think, in the back room, and he passed it to me; $10 at one time, and $20 at another time.

Q. Were you appointed special guardian at that time, do you say? A. On the final settlement, do you mean?

Q. Yes. A. No, I think I was not; I think Dr. Prindle was the special guardian on final settlement; I am quite positive about it; Dr. Prindle was very frequently appointed special guardian.

Q. The judge had authority from you, in all these cases, to collect money for you? A. No, sir.

Q. He did it without authority, then? A. When the money was paid to him it was without authority to collect it or authority to receive it.

Q. At the time of the granting of letters upon the Chapin estate, you say the judge told you to go to the office and make up the papers for settling the estate? A. Judge Prindle said to me substantially then that there were some parties there who wanted to prove a will and settle up an estate, and he had told them that he would have me at the office, and that the business would be all transacted and done there; requested me to go to the office for that purpose, which I did.

Q. Were you employed in the matter otherwise than by this direction of Judge Prindle? A. I went into the office and asked the parties what they wanted done, and they stated it over there; I drew the petition and papers for the proof of the will, and drew—

Q. Were you employed in the matter otherwise than by the direction of Judge Prindle? A. No, sir; only as I have stated.

Q. In that case did you inform them that you should charge them as an attorney at law? A. No, sir; I did not; there was nothing thought about it or said about it.

Q. Now, sir, in the Adelaide E. Parker estate, do I understand you to say that the money was paid to you by Judge Prindle? A. Yes, sir.

Q. Were you present at the time that business was done? A. At the time Mr. Parker was there?

Q. Yes. A. Yes, sir.

Q. Who drew the letters that were issued to him? A. I think Judge Prindle did; Judge Prindle I am certain drew the bond.

Q. Drew the letters also, did he? A. I think he did.

Q. In that case did you inform him that you should charge him as attorney at law? A. I don't think I did.

Q. Were you employed by him? A. Perhaps he wouldn't call it an employment.

Q. Well, sir, how did you come to do the work, because Judge Prindle requested you to do it? A. He was there and wanted it done.

Q. The judge asked you to do it, didn't he? A. I don't remember that; perhaps he did.

Q. In the Miller estate, do you remember when the petition was drawn for granting letters in that estate; the application made for the proof of the will? A. It was about the 3d of April, 1867.

Q. That was before you were admitted as an attorney at law? A. Yes, sir.

Q. Who drew the papers? A. I did.

Q. At whose request? A. At the request of John Mitchell, I think; yes, I think he did the talking.

Q. State the language that was used, if you can? A. I can't do it; Mr. Mitchell came there with Mrs. Milner; Judge Prindle was not there; Mr. Mitchell stated what business he wanted done, and I went to work and done up the petition; I made the arrangement with Mr. Mitchell that Judge Prindle should go to Mrs. Milner's house and take her affidavit, which Judge Prindle did; whether Mr. Mitchell afterward came to the office and swore to it, or whether Judge Prindle went to his store, I couldn't state.

Q. You were appointed as guardian for two infants in that case? A. I was.

Q. Did you receive the money for it? A. I received $20 of Judge Prindle.

Q. When was that paid to you? A. It was paid to me within a month or two after; I wanted some money; I was going away somewhere; Judge Prindle told me I was entitled to my pay in that case, and that when he collected his fees from John Mitchell, he would collect it all together.

Q. Were you paid more than $20 in reference to that matter? A. I think not.

Q. You say that was in what month? A. I think it was the 3d of April, 1867; my papers would show.

Q. You have stated what the commissions of Mr. Mitchell were in that case? A. I think I stated that the commissions were $400, as shown by the final accounting.

Q. And you stated the estate was about $20,000? A. The account shows something over $21,000.

Q. Do you not know, sir, that was a very complicated estate; Mr. Milner was a member of two different partnerships, the affairs of which were unsettled when he died, were they not? A. Yes sir.

Q. And Mr. Mitchell employed an attorney to close up the affairs of those partnerships? A. I suppose he did.

Q. And it was for those services that you have stated Mr. Mitchell employed an attorney and paid $300? A. That is my supposition; he employed an attorney on the final accounting.

Q. Who did he employ at that time? A. Geo. W. Marvin.

Q. Were you present at the time of the final accounting? A. Yes, sir.

Q. Do you know how much money was demanded of Mr. Mitchell, and how much he paid at that time? A. Thirty-five dollars was demanded of him.

Q. Do you know what that $35 was for? A. Yes, sir; it was for what money Judge Prindle had paid me for my services in the matter, and for Judge Prindle's fees.

Q. And that was all? A. Why Judge Prindle probably charged him some interest on the money; and the will was proved some time about the 27th of April, 1867, and John Mitchell did not pay those fees until four years afterward, and I presume Judge Prindle charged him interest on that bill during that time, as he was entitled to do.

Q. There was no claim that any part of it was for stamps? A. No, sir; not unless there was a probate made out; and I think there was; there must have been fifteen cents of it for stamps.

Q. Who appeared as the special guardian or guardian *ad litem* of the infants at the time of the proving of the will? A. I did.

Q. Who appeared at the time of the final accounting? A. Andrew Shepardson, a member of Assembly; he was allowed $10 for it and received it.

Q. You never claimed to have been employed as attorney in that case at all? A. No, only—

Q. No further than the appointment as guardian *ad litem*? A. No, sir.

Q. In that case did you ever make any affidavit as guardian *ad litem* in reference to the duties that you had performed? A. No, sir.

Q. Did you in any case where you have been appointed guardian *ad litem* make an affidavit as to the duties that you had performed in the matter to have filed before you received your money? A. I think not.

Q. There never was any practice of that kind in your court? A. I think not; the surrogate's court I suppose you are speaking of; I think the statute calls it a "special guardian" and does not say "guardian *ad litem*;" the consent was always signed and filed and then the guardian performed his duties; I suppose assuming the responsibility that it was properly done.

Q. Now, sir, in this Ferguson estate you do not claim ever to have been employed as attorney, do you? A. No, sir.

Q. Do you mean to say, sir, that the receipt you gave in that case does not say "for H. G. Prindle"? A. I don't think it does.

Q. What do you think it does say? A. I think the receipt was signed first by me in one style of handwriting; then I know that I had a conflict with the executor, and he wanted a receipt of Judge Prindle, and finally I told him I would put in the surrogate's name; should not make it any stronger, for I hadn't any authority to do it; I think the receipt shows that it was not for surrogate's fees nor disbursements; it may have been for some surrogate's disbursements, but I think it expresses on its face that it was for special guardian; if it says "For" on it, I think that that "For" has been put there by some other person; for I did not receive that money for him.

Q. What was the money for that you received? A. For services as special guardian; for stamps, and for examining the law for the executor.

Q. That is, fees as counsel or attorney? A. For what I did.

Q. It was for your services as attorney? A It was not in connection with the proof of the will at all; it was for services that I performed after the will was proved.

Q. You knew at the time that he thought he was doing business with the surrogate, didn't you? A. He did do business with the surrogate.

Q. Well, sir, didn't you know at that time that he supposed he was doing business entirely with the surrogate; surrogate's duties? A. I know that he not only supposed he was, but that he knew he was.

Q. You did not claim to him that you was attorney in the case? A. No, sir.

Q. You didn't claim to charge him as attorney in the case, did you? A. No, sir.

Q. Or attorney in any case? A. I claimed to charge him as special guardian, and for disbursements, stamps, etc.; and I increased my charge for the reason that I spent some little time in examining the law at his request.

Q. Was there any order entered, ordering the judgment of any fees to you as special guardian? A. I don't know, sir.

Q. Well, you would have known it if there had been, would you not? A. Probably not; I didn't have much of the orders in the surrogate's office.

Q. Didn't you usually enter the orders upon granting letters of

administration? A. I frequently did it when Judge Prindle was pressed and I had leisure.

Q. Do you know of a single case where you have received money as special guardian, or guardian *ad litem*, where there has been an order entered, ordering payment of that money to you as such guardian? A. I don't know as I could specify any case now, and I don't know but every order that Judge Prindle has made specifies it.

The hour of 2 o'clock having arrived, the Senate took a recess until 4 o'clock.

The Senate re-assembled at 4 o'clock, P. M.

GEORGE W. RAY resumed on the cross-examination.

By Mr. STANTON:

Q. Do you claim that you were employed as attorney in the case of Mrs. Hadlock? A. I do.

Q. By whom were you employed? A. I was employed by her.

Q. The executor himself had an attorney, hadn't he? A. Yes, sir; I had nothing to do whatever with the papers or services in the matter of proving the will; with that I had nothing to do.

Q. What did you have something to do with? A. With arranging to get Mr. Wescott to renounce and leave the matter in the hands of Mrs. Hadlock entirely.

Q. You say letters had already been issued to Mr. Wescott? A. I say letters were made out to him, but they were recorded in the book, and were never delivered to him.

Q. You say that they were scratched off from the books, as I understand? A. Yes, sir; they were.

Q. Who did that? A. I can't tell you.

Q. You don't know who scratched them off? A. No, sir, I don't; whether Judge Prindle or I did it; I think it was done by Judge Prindle, but I can't tell you.

Q. Those books are not here, I suppose? A. No, sir.

Q. How much money did you receive from that estate? A. From the Hadlock estate?

Q. Yes, sir. A. I received thirty-five dollars in all.

Q. Who did you receive from? A. Mrs. Hadlock.

Q. You received no part of that from Judge Prindle? A. No part of it from him.

Q. Who was in the office when that was paid by her? A. No one but myself.

Q. Did you give her a receipt? A. I can't tell you now.

Q. You say you served the citations in the Bowdish case? A. Yes, sir.

Q. How did you come to go and travel over the country to serve citations with a livery team? A. I did not, only in one instance with a livery team; yes, I did two.

Q. Where did you go then? A. The first time was from Norwich to Freetown, in Cortland county; I should not have gone if it had not been for the purpose of seeing Mrs. Ogden; one purpose was to serve the citation, and another was to see her in regard to statements and declarations that had been made by the widow, and Mr. Bowdish, who was there a short time before he died; mainly for the purpose of getting evidence.

Q. Was there any contest made by Mrs. Bowdish in the matter? A. There was on the start.

Q. What contest was there? A. She claimed that she was not a resident of the State of New York; she claimed that her husband was not a resident of the State of New York at the time of his death; that he had changed his residence to the State of Ohio, and that the surrogate of Chenango county had no jurisdiction in the matter, whatever.

Q. Where did she make the claim? A. At the surrogate's office and at the time I served the citation upon her; that claim was made as I understood from the legatees and heirs; she abandoned it finally.

Q. There was no contest before the surrogate? A. No, sir.

Q. There was no contest of any kind in the matter, over any question, before the surrogate? A. Yes, sir.

Q. Well, what question? A. There was no contest before the surrogate, but the preparations were made just the same.

Q. How many of the heirs did you have consultations with in that matter? A. Four that I think of now.

Q. Who were they? A. C. G. Bowdish, W. W. Bowdish, Arvina C. Bowdish and Susannah Ogden; there were other heirs with whom I had consultations at Richfield Springs; two of them; I would not pretend to tell their names now; their names were Bowdish.

Q. Did you have much conversation with the widow, when you went up there to serve the citation? A. But very little.

Q. Have you detailed the whole of it, upon your direct examination? A. I presume not; I can't recollect it all now, Mr. Stanton.

Q. Do you mean to say she claimed in the conversation then that she was going to Ohio? A. Yes, sir; she did.

Q. You heard her evidence here upon the stand, didn't you? A. I think I did.

Q. She swore falsely upon that point, did she? A. No, sir, I don't say that; I think she is mistaken in regard to it.

Q. What was it that she said; can you give her language in reference to going to Ohio? A. Oh! she claimed she was a resident of Ohio.

Q. Did she claim she was going there? A. Yes, sir.

Q What did she say? A. She said she was going to take the will and go to Ohio, and that there she could hold all of the property in spite of the will; that she was a widow; she claimed further that at least half of that property was her own individual property, and that her husband (Leonard Bowdish) had no right to will it away, and she claimed that she should make that claim.

Q. But she didn't make any such claim, did she? A. There has not been a final settlement of the estate; I don't know what claim she will make; that is a question which will properly arise then.

Q. (Showing paper.) Is that statement in your handwriting? A. Yes, sir.

Q. That is a statement that you made of this transaction? A. Yes, sir, in the law office of Mr. Follett, without examining any books or papers.

Mr. Stanton — Well, we will offer that in evidence.

Witness — I would like to state before it goes in evidence what it is; Mr. Follett, during the campaign, said that Judge Prindle stated in a meeting at Sherburne that my costs in the matter were taxed; that he allowed me expenses and for services, and that Judge Prindle said I would give him a statement of it, or something to that effect, and Mr. Follett wanted I should make him a copy of the order; I was in his office and we were all very busy at that time, and I told him I did not have time to go there and make a copy, but that I would sit down there and make a statement of it, just as near as I could remember, and I thought I could get very near the facts.

The same was here marked Exhibit 48, and is as follows:

EXHIBIT No. 48.

SURROGATE'S COURT — CHENANGO COUNTY.

In the matter of the proof of the last will and testament of LEONARD BOWDISH, deceased, and proceedings to compel executrix to give bail.

C. G. Bowdish, of Collinsville, Connecticut, petitioner for proof of will, and one of residuary legatees.

Total amount paid George W. Ray, attorney for petitioner,	$225 00
Paid C. G. Bowdish by G. W. Ray, his expenses to Norwich on two occasions connected with said business....	$50 00
Paid expenses of self to Freetown, Richfield Springs, Canandaigua, Collinsville, and other places, to serve citations on heirs, and to see executor.....	50 00
Paid deputy sheriff serving citations in matter compelling executrix to give bail	4 00
Paid publication fee in State paper; citations to prove will,	15 57
Paid stamps on letters testamentary.....	6 00
Paid stamp on bond filed by executrix.....	1 00
Stamps on probate and certificate on will	15
Paid H. Bowdish, of Richfield Springs, for serving citation on heir below Cooperstown, in Otsego county.....	3 00
Money sent different heirs to pay expenses of obtaining admissions	1 00
Paid county clerk of Otsego county, certificate, etc., to acknowledgment	30
Paid postage at different times in writing letters, mailing citations, etc., probably.....	1 25
	$32 27
Total disbursements	$132 27
Leaving for services in the whole matter.....	$92 73

My services were as follows:

Drew petition for proof of will, etc., and was employed by C. G. Bowdish, who was the petitioner.

Went personally to Earlville, to Richfield Springs, Canandaigua, Freetown, Cooperstown, Collinsville, Ct., and other places, to serve process and see C. G. Bowdish; was notary public and took many affidavits and acknowledgments; also took and attended to all neces-

sary proceedings to compel executrix to give bail, which is more work than to prove a will.

Drew all the papers in both matters.

The reason why the matter was taken in hand was, that Mrs. Bowdish was willed the use of about $12,000, and when I went to serve papers on her she stated to me that Leonard Bowdish was a resident of Ohio, and not of New York, and that Prindle had no jurisdiction; and also stated that in Ohio she could hold all the property in face of the will, and that she should go there with it. She made a fight before the surrogate on that point.

Yours truly, GEO. W. RAY.

The WITNESS — There are several statements there that do not accord exactly with the facts; the papers which were filed in the matter show exactly what the charges were and all about it; that paper I made from memory, without consulting books or papers; I made it on the spur of the moment.

Mr. STANTON—I don't care to read the whole of this, but still I will read it if it is desired.

Senator BENEDICT—Do you put it in evidence?

Mr. STANTON—Yes, sir.

Senator BENEDICT—Then we can read it in the record.

Mr. STANTON—I will read a part of it, as follows: "The reason why the matter was taken in hand was, that Mrs. Bowdish was willed the use of about $12,000, and when I went to serve papers on her she stated to me that Leonard Bowdish was a resident of Ohio, and not of New York, and that Prindle had no jurisdiction; and also stated that in Ohio she could hold all the property in face of the will, and that she should go there with it. She made a fight before the surrogate on that point. Yours truly, Geo. W. Ray."

Q. You gave a receipt to Mrs. Bowdish when she paid you that money, did you? A. I think I did.

Q. Do you recollect the form of the receipt? A. I can't tell you now.

Q. Don't you recollect the fact that the receipt stated that it was taxed and allowed by the surrogate? A. I think so.

Q. Now, sir, in what manner was that taxed? A. It was taxed in this manner: I made a heading of the case and then I went on; there were two proceedings; I think I put in two heads at the top of both proceedings; I then went on and made a statement of the amount paid out by me for different purposes; then I think I made the statement in evidence, the paper is here and will show for

itself, of the different charges for different services; so much for going here and so much for going there, and so much for doing that thing and so much for doing this thing; I then footed it up, and the surrogate examined it and taxed it, and allowed it and made an order which was entered I believe in the books; I think I entered it myself; it was directing her to pay that amount to me.

Q. Have you the order here; if you have, we would like to have it? A. I shall have to step out in order to get it.

By Mr. PECKHAM:

Q. Have you the tax bill here? A. It is here, sir; I took the papers when I went to dinner; there is a little place in the next room where I locked them up; I will get them (the witness here retired and produced the required papers); I think there are some slight errors in these, and there is one charge that is under one head and should be under the other head.

By Mr. STANTON:

Q. (Showing paper) Is this the tax-bill, sir? A. Yes, sir; there is also an order.

Q. Both in your own handwriting, are they? A. Yes, sir; I drew them both.

Mr. STANTON—We offer those in evidence.

The same were here marked respectively Exhibits 49 and 50, and read as follows:

EXHIBIT No. 49.

At a surrogate's court, held at the surrogate's office, in Norwich, Chenango county, N. Y., in and for said county, on the 17th day of August, 1870.

Present—H. G. PRINDLE, *Surrogate.*

SURROGATE'S COURT—CHENANGO COUNTY.

In the matter of the execution of the last will and testament of LEONARD BOWDISH, deceased.

The costs of the petitioner, Charles G. Bowdish, a legatee named in the last will and testament of Leonard Bowdish, deceased, in the matter of the proof of said last will and testament of said deceased, having been taxed and allowed at the sum of one hundred and eighty dollars, and his costs in the matter of filing of objections to the issuing of letters testamentary to Hancy Bowdish, executrix in said will named, and proceedings therein having been taxed and allowed at

forty-five dollars, the whole of the costs and disbursements in said matters, as taxed and allowed by said surrogate, amounting to the sum of two hundred and twenty-five dollars, it is ordered, by virtue of the power and authority in said surrogate vested, that said costs and disbursements be and the same hereby are allowed and fixed at that sum, and said Hancy Bowdish, executrix of said last will and testament, is hereby ordered and directed to pay the same to George W. Ray, Esq., the attorney of the said Charles G. Bowdish, said petitioner, and also attorney for said objectors, on demand.

H. G. PRINDLE, *Surrogate.*

Indorsed: Surrogate's court. In the matter of the execution of the last will and testament of Leonard Bowdish, deceased. Order for executrix to pay costs. Recorded August 17, 1870, in book of orders and minutes, at page 469. H. G. Prindle, surrogate.

EXHIBIT 50.

SURROGATE'S COURT — CHENANGO COUNTY.

In the matter of the proof of the last will and testament of LEONARD BOWDISH, deceased.

SURROGATE'S COURT — CHENANGO COUNTY.

In the matter of the execution of the last will and testament of LEONARD BOWDISH, deceased.

COSTS OF PETITIONERS AND OF OBJECTORS.

Disbursements.

Expenses of C. G. Bowdish, petitioner and legatee and conditional executor, from Collinsville, Conn., to Norwich, to commence proceedings for proof will, etc., and return	$25 00
Same at time of proof of will, and to file objections to issuing of letters, etc., and return	25 00
Paid Argus, State paper, publication fee of citation to prove will	15 20
Paid expenses serving citation on Susannah J. Ogden, in Cortland county	8 00
Paid expenses, fare, hotel bills, livery hire, etc., serving citations to prove will on heirs in Otsego county	20 87
Paid expenses serving citations on heirs at Skaneateles, N. Y	2 00

Paid expenses serving citation, etc., on Hancy Bowdish, widow and executrix	$3 00
Paid postage, estimated	1 25
Paid expenses subpœnaing witnesses to the will	5 00
Stamps on probate	10
Stamps on letters	6 50
Stamp on bond	1 00
Stamp on certificate on will	05
Incidentals	1 00
	$113 97

Services.

One day to Earlville to serve citation on widow	$3 00
Two days to Cortland county, to serve citations on S. J. Ogden, and consult her	10 00
Four days to Syracuse, Utica, Richfield Springs, Hartwick, etc., to see heirs and serve citations	15 00
One day to Collinsville, Ct, to see C. G. Bowdish, and expenses	7 50
One day to Bainbridge	5 00
Drawing prb. for will	3 00
Drawing citations	5 00
Mailing citations, etc., to heirs out of State and making proof,	10 00
Copy, will and probate, etc	2 50
Attending proof of will	5 00
Counsel fee included in above charges.	
	$179 97
Incidentals	03
	$180 00

Disbursements in Matter of Bail.

Paid sheriff serving papers	3 00
sheriff to pay witnesses	1 75
witnesses in Bainbridge	4 20
telegram	75
postage	36
Services in matter of giving bail, examining law, two days before surrogate, writing letters, drawing papers, etc., etc.	35 00
	$225 00

STATE OF NEW YORK, } ss:
COUNTY OF CHENANGO, }

George W. Ray, of Norwich, in said county of Chenango, being duly sworn, says that he is the attorney and counsel for Charles G. Bowdish, the petitioner in the matter of the proof of the last will and testament of Leonard Bowdish, deceased, and also for the objectors in the matter of the issuing letters testamentary on said will; and as such attorney has done or attended to the whole business in regard to such matters, and made and paid, or become responsible to pay, all the disbursements in the said matters, except the fifty dollars expenses to C. G. Bowdish, and that all such disbursements were necessary and proper in the case, according to the best knowledge, information and belief of deponent; that he has traveled over the same route and distance necessarily traveled by said C. G. Bowdish in coming to Norwich, and knows that the expenses necessarily incurred in making the journey here and home again are at least twenty-five dollars; that said C. G. Bowdish has been to Norwich twice on said matters, and that such attendance by him was necessary and proper for the proper settlement and protection of the estate. Deponent further says, that he has rendered all the services charged for in the necessary performance of his duty as attorney in said matter; and that the services performed were worth the sums charged. GEO. W. RAY.

Subscribed and sworn to before me }
August 17, 1870, }
H. G. PRINDLE, *County Judge.*

The costs of C. G. Bowdish, the petitioner in the proof of the will, are taxed and allowed at the sum of $180; and the costs of the objectors in said matter are hereby taxed and allowed at the sum of forty-five dollars.

Dated *August* 17, 1870.

H. G. PRINDLE,
Surrogate.

Indorsed: Surrogate's court. In the matter of the proof of the last will and testament, etc., of Leonard Bowdish, deceased. Costs of petitioner and objectors. G. W. Ray, attorney. Filed August 17, 1870. H. G. Prindle, Surrogate.

The WITNESS — All except the signature of the judge is in my handwriting.

Q. The judge's name is in his own handwriting, is it? A. Yes, sir.

Q. You say, in the Knowles estate, William Browning, executor, that the judge marked the amount paid on your book? A. I had the charge made in a little book that I kept accounts in for a little while; I had him charged with $27 and some cents, and the book was in a drawer in my desk, and Judge Prindle marked in it.

Q. He knew where you kept your books? A. I don't think he did.

Q. How did he find it; were you present when he marked it? A. No, sir; I presume he went to my desk and hunted for it and found it; I don't know how he found it.

Q. You say that in the Knowles estate you were employed as attorney? A. I was interested in it at the time.

Q. Who employed you? A. I understood that Mr. Browning did.

Q. Did you notify him that you should charge him fees as an attorney at law? A. He asked me what the charges would be before I did any business for him.

Q. What charges? A. What the charges would be for doing the business.

Q. Can you give the language he used? A. No, sir; it is too long ago.

Q. You say you signed in the Humphrey case, a statement with Judge Prindle's name? A. Yes, sir.

Q. How came you to do it? A. He wanted a statement from authority.

Q. You gave him one with authority, didn't you? A. No, sir; I had no special authority to do it.

Q. Was Judge Prindle absent or present then? A. He was there some time during the day, but he was not there when I drew the account and made the statement; I think he was at his house, but I would not swear positively.

Mr. STANTON — I would state that I wish to offer in evidence this final accounting in the Barrows case as to the two items that were allowed; I will not offer the whole of it, as it would incumber the record too much, but I will read what I wish put in evidence, as follows: "Cash paid H. G. Prindle, Esq., attorney and counselor, expenses of obtaining order and decree in Supreme Court for sale of real estate, $350; cash paid G. W. Ray for services and expenses, proving will and final settlement, for stamps, publication in the State paper, and Telegraph and Chronicle, and for notice to creditors, $37.50."

Q. That is all in your handwriting, is it, Mr. Ray? A. I think it is.

Q. At the time that you were admitted to the bar and were about to locate somewhere for business, what was it that Judge Prindle said to you in reference to remaining in his office? A. He said I could stay there in the office if I wished to; that it was a convenience to the public to have an attorney there.

Q. Did he state any thing else? A. No, sir.

Q. Did he state that he would give you what business he could in his office? A. No, sir.

Q. You say he did not say any thing of the kind? A. No, sir.

Q. Didn't he tell you he should be glad to help you with business as much as he could? A. I don't recollect his ever saying that to me; I presume that he had a wish that way; that is my presumption entirely.

Q. Have you ever heard him state that? A. No, sir; I don't think I have.

By Mr. BENEDICT:

Q. That he wished you would stay there? A. No, sir; he said I could stay there; that it was a convenience to the public to have a lawyer there in the office.

By Mr. STANTON:

Q. Did he say any thing about its being a convenience to him to have you remain there? A. No, sir; not that I remember; he might have said *this*, and it strikes me that he did say, that I was so familiar with all the records and papers on file, that when people came there in his absence, that I could readily refer them to any book or paper in that office; I think he did say something of that kind to me, though perhaps not in those exact words.

Q. Mr. Prindle has this work of "Dayton on Surrogates," has he not? A. It is there in the office; I suppose he owns it.

Q. It lies on his table there, don't it; has a good part of the time since you have been in the office? A. Yes, sir; of course he has a good many other works on executors and administrators.

Q. Now, sir, did you ever pay any thing yourself to clerks for the purpose of recording surrogate's papers in the surrogate's office, since you have been there, as an attorney at law? A. Out of my own pocket?

Q. Yes, sir. A. No, sir.

Q. Did you not state in the presence of Mr. Gladding and Mr.

Church that you had paid more than $50 out of your own pocket for the purpose of writing the records up in the office? A. No, sir; I stated to them, and I stated publicly I guess twenty or thirty times, that I had paid (not out of my own pocket) clerks or persons for recording; the statement was made that Judge Prindle, out of this clerk hire which he received from the county, had never paid any thing for recording; that he got it done free by me; I made such a statement to Mr. Gladding and Mr. Church, and I made it publicly wherever I went, that I knew Judge Prindle had paid money, for I had paid it to them for recording records of the office.

Q. When did you pay it? A. I can't give you the dates exactly.

Q. Can you tell in what year? A. In 1869 and 1870 I paid money.

Q. How came you to pay it, sir? A. Judge Prindle gave me the money to give it to the woman in one instance, and in one instance she came there and was very anxious to see Judge Prindle and get the money, as she wanted it to use, and I told her I would pay it and Judge Prindle would pay me; I remember I paid $15 in one instance.

Q. How much altogether have you paid in that way? A. I have paid about $50 myself for Judge Prindle for recording of that kind.

Q. Did you have much other business than surrogate's business during the year 1871? A. Yes, sir.

Q. Which brought you considerable money? A. Yes, sir.

Q. What class of business, sir? A. I had a great deal of justices' court business, and some county court business, and considerable Supreme Court business; I have had more than I could expect.

Q. Did you ever have any talk with Judge Prindle about the propriety or impropriety of your appearing before him as an attorney at law? A. Never any talk about it at all.

Q. Did you know that it was improper for you to practice before him while in the office as a clerk? A. I never was there as a clerk.

Q. While you were doing the duties of a clerk in the office? A. I never did the duties of a clerk in the office, only, as you might say, while I was a student; I will say, Mr. Stanton, for me, as a clerk of the surrogate, to appear before him in any respect, was contrary to law and improper.

Q. You claim that Thompson was the clerk of the surrogate and that nobody else came within the statute? A. No, sir; I never made any such claim; I have frequently claimed that he was the clerk of the surrogate, as contemplated by the statute.

Q. Didn't you claim that it was proper for you to appear before Judge Prindle because you were not the statutory clerk of the surrogate? A. No, sir.

Q. Judge Prindle never made any suggestion to you of the impropriety of your appearing before him? A. No, sir.

Q. You always did it with his consent and encouragement? A. Why, he never encouraged me.

Q. He did by referring parties to you? A. Sometimes he did refer parties to me.

Q. How many actions have you been engaged in in the county court as attorney and counselor before Judge Prindle as judge? A. I shall have to guess at it.

Q. About how many? A. Fifty.

Q. How many times have you appeared in the judge's court of sessions, or the court of sessions of Chenango county, as attorney or as counselor? A. Anywhere from fifteen to twenty-five or thirty times.

Q. During what time? A. From the time I was admitted in November, 1867, down to January, 1872.

Q. You are a lawyer, Mr. Ray? A. Yes, sir.

Q. What did you suppose the object of that statute was which says that "no clerk, son or partner of a judicial officer" shall appear before him?

Mr. E. A. PRINDLE — Mr. President, I think this witness has been tried about enough; I object to his understanding of what the law was.

The question being put as to whether the objection should be sustained, it was decided in the affirmative.

Re-direct examination by Mr. PRINDLE:

Q. I want to call your attention to a single fact, if you recollect that Sydney Hayward was also a student in the office of Judge Prindle? A. I do.

Q. And did considerable recording? A. Yes, sir.

By Mr. PERRY:

Q. Mr. Ray, I want to call your attention more particularly to the question of the relation which existed between you and the judge; I understand you to say that there was at no time the relation of partner existing between you and the judge? A. Never; no, sir.

Q. That you had never had any conversation together for the purpose of forming such a relation, directly or indirectly? A. No, sir.

Q. Then while you continued there in the office as an attorney, it was solely on your own account? A. Yes, sir.

Q. Independent of the judge or of his practice? A. I say so; yes, sir.

Q. Now, did you, during the time that you acted as attorney, contribute any portion of the fees or charges that you received for services that you performed as attorney to the judge? A. Never, sir.

Q. Did he ever directly or indirectly receive any part or portion of your earnings in that office? A. No, sir.

Q. Did he ever directly or indirectly receive any part or portion of your earnings for services performed in cases which you tried before him in the county court? A. No, sir; not for his own use; there was an occasional instance where a man would come there to pay money to me, and Judge Prindle would take it and pass it over to me, but not receive any for himself.

Q. What I want to understand now decidedly is, whether there was any division between you at any time of any of the earnings which were received for your services? A. No, sir; never.

Q. During any portion of this period of time, did you share in any way directly or indirectly in any fees or costs which he received or earned in his office or in his business? A. No, sir; only in the Barrows estate; there was $350 fixed as the costs and expenses of that proceeding, which covered the costs of the attorney for the defendant as well as for the plaintiff, and out of that he paid me for my services as attorney for the defendants the sum of $75.

Q. That was paid under an order? A. Yes, sir.

Q. But beyond this I understand you to say there never was any participation by him in your earnings or by you in his? A. Never, sir.

Q. While you remained in that office? A. Never.

By Senator D. P. Wood:

Q. You stated that the Barrows estate amounted to about $2,000? A. Well, the account shows it was more than $2,000.

Q. You state that your bill was made out for $50? A. Yes, sir; that included my disbursements.

Q. And that that took it beyond the amount of the estate? A. Yes, sir.

Q. And that in consequence of that, your bill was reduced to the amount which was allowed — $37 and some cents — to keep it within the amount of the estate? A. Yes, sir.

Q. That is to say, as I understand it, the indebtedness of the estate included in the final account, together with the various

bequests all put together, amounted to the full amount of the estate, lacking the amount that was paid you? A. Yes, sir.

Q. What if your bill had been allowed at its full amount, the estate would not have been large enough to have paid its debts and the full amount of the bequests, together with your full bill? A. No, sir, it would not have been.

Q. And that, to avoid curtailment of the bequests, your bill was reduced? A. Yes, sir.

Q. Bringing it within the aggregate amount of the estate? A. Yes, sir.

Q. And that you got the balance of your pay from the costs which the judge had received in his bill of costs on the suit for the sale of the real estate? A. Yes, sir.

Q. That is what you mean by saying that your bill, if allowed to its full amount, exceeded the whole amount of the estate? A. Yes, sir; the debts of the estate were paid in full, including two claims of the executor of the estate, of toward $200 which was proved before the surrogate; all of the specific bequests were also paid in full; my bill was $50, but there was not enough of the estate to pay it into some twelve or thirteen dollars, so I cut my bill down; so the estate then paid me my bill of $37; paid the bequests in full; paid the debts and all the funeral expenses in full, and then Judge Prindle told Mr. Barrows that he would make it all right with me and paid me $25 in addition to my services in regard to the settlement of the estate, out of the moneys that he received.

Re-cross-examination by Mr. STANTON:

Q. How much did you receive altogether from the Barrows estate from first to last? A. What I received from Judge Prindle?

Q. From all sources coming out of that estate? A. $137 and some cents is my memory now; I think Mr. Barrows never paid me any thing else; the account will show if he did.

Q. One hundred dollars of that was paid to you by Judge Prindle was it? A. Yes, sir.

Q. You do not mean to say that all the legacies given in the will were paid? A. All of the specific legacies were paid in full; there was a residuary clause; if there had been any balance for distribution, of course it would have gone under the residuary clause; there was nothing paid under the residuary clause.

Q. Then the amount which you received, or the amount of this $350 which the judge took upon this suit, swallowed up all of the

estate, after paying the specific legacies, so that there was nothing to go under the residuary clause of the will? A. Yes, sir; after paying all debts, and funeral expenses, and specific legacies, and paying Judge Prindle $350, out of which he paid me $100, there was nothing to go under the residuary clause.

Q. Did I understand you to say in answer to the question of the senator, that this $85 was paid you under an order? A. It was paid under the order of the Supreme Court, fixing the costs and the expenses of the suit in the Supreme Court.

Q. That is the order that is in evidence isn't it? A. Yes, sir.

Q. Well, that order does not fix the costs, does it, any more than fixes a limit to the costs? A. Why, the judgment itself fixes it; the order says that it shall not exceed that sum, as I understand it.

By Senator D. P. Wood:

Q. Were the residuary legatees under this will the same as those to whom the specific bequests were made? A. Yes, sir; the same precisely; and the residuary legatees were the defendants in the action, from all of whom I had authority to appear in the suit.

By Mr. Mygatt:

Q. You had a power of attorney to appear for all these defendants in that action, had you not? A. Yes, sir.

Q. Several powers of attorney? A. Yes, sir, three or four powers of attorney.

William J. Merrifield, a witness called on behalf of the respondent, having been duly sworn, testified as follows:

Examined by Mr. E. H. Prindle:

Q. Where do you reside? A. In Norwich, sir.

Q. What is your occupation? A. Clerk in the county clerk's office.

Q. You are the deputy clerk? A. Yes, sir.

Q. You were clerk in the office at the time of the bonding of Smithville for that railroad? A. I was.

Q. Do you recollect when the judgment roll in that matter was filed — when the judgment was filed in the office? A. I do, sir.

Q. Do you recollect the time of day it was filed? A. Yes, sir, about nine o'clock in the morning.

Q. Who filed the judgment roll? A. Judge Prindle.

Q. Did you receive it from Judge Prindle? A. I did; I received it from Judge Prindle, and filed it myself with a stamp in the office.

Q. Do you recollect any circumstances about filing it yourself, personally? A. Yes, I know more particularly from having stamped it twice, for the reason that the first time, the paper being folded on the inside, only admitted the half of the stamp being visible; the other stamp I placed upon the right-hand side a little, and had the full impression of the stamp.

Q. You stamped it with an instrument? A. Yes, sir.

Q. Do you remember Mr. Follett's being in the office that day? A. Yes, sir.

Q. Was it long before that that the paper had been filed? A. Yes, sir; Mr. Follett didn't come in until afternoon, while the bonds were being registered.

Cross-examination by Mr. STANTON:

Q. What time in the morning did you say? A. Nine o'clock, sir.

Q. About nine o'clock? A. Yes, sir; about that.

Q. From what do you recollect the particular hour, sir? A. From the reason that it was brought by Judge Prindle himself, and it was an unusually early hour for him to be around.

Q. Is that the only circumstance from which you recollect the hour? A. Not at all, sir.

Q. What other circumstance? A. On account of there being such a feeling with regard to the bonding of the town.

Q. That makes you recollect the particular time of day? A. Yes, sir.

Q. Any thing else? A. Yes, sir.

Q. What else? A. For the reason that Mr. Follett came into the office, and I heard afterward that he made the remark that the bond was not filed until he was in in the afternoon.

Q. How long after that was it that you heard that? A. I heard it since; I couldn't tell you exactly how long.

Q. It was a long time after, was it, when you heard this? A. Yes, sir; but I distinctly recollect the filing of the bond on account of giving the second impression of the stamp.

Q. Do you recollect looking at the clock or seeing what time it was when that was filed? A. Yes, sir.

Q. It was just nine o'clock, was it? A. I couldn't say exactly nine o'clock; I think I asked the question whether it was necessary to put the time of day on it, and I believe that I was answered in the negative.

Q. Who brought it in to be filed? A. Judge Prindle.

Q. Anybody else in the office? A. No, sir.

Q. Had you seen any of these Smithville men at that time? A. No, sir; I had not then.

Q. You have taken a pretty active part in the matter for Judge Prindle, have you? A. I have not, sir.

Q. You have a great deal of feeling in the matter, and talked a great deal about it? A. Decidedly.

Q. Did you look at that judgment roll to know whether the appointment of the commissioners was attached? A. I did, sir.

Q. Was it attached? A. It was, sir, on the back part or the last half of the sheet.

Q. When it was first filed? A. Yes, sir.

Mr. E. H. PRINDLE — Now, I suppose there is some more evidence to be given on the part of the prosecution, and we desire to have them do it before we proceed farther.

Mr. STANTON — We have not had sufficient time yet to examine those records; they are being examined now as fast as two gentlemen can do it. We asked for these last evening, you recollect, for the express purpose of getting it completed earlier, and you declined to give them to us.

Mr. E. H. PRINDLE — They came here very late, and I was feeling unwell myself, and it was impossible, almost, to do it, but they were here according to the order of the Senate this morning.

Mr. TIEMANN — If they are not ready to go on with this testimony, I move that we go into an executive session.

Mr. E. H. PRINDLE — I will call one more witness.

CHARLES W. SCOTT recalled, testified as follows:

Examined by Mr. E. H. PRINDLE:

Q. Mr. Scott, do you remember having a conversation with Luther Brown, a witness who has been sworn here, in regard to money paid to Mr. Ray? A. I do.

Q. Will you state what was said? A. I don't know as I remember at this time what estate in particular it was; thought it was an estate he had something to do about; I was at Pharsalia Hook one day, soon after Judge Prindle was nominated, and there were some

two or three gentlemen in the hotel, in the bar-room, talking about the nomination, and one old gentleman by the name of Houghton remarked that there was a gentleman in their town that had paid fees to Judge Prindle and got his receipt for it; I told him that I had heard of several such cases, but upon tracing them out had not found any such facts.

Mr. STANTON — We do not see the relevancy of this testimony. The counsel very well knows that the attention of Mr. Brown should have been called to this conversation, and he should have denied any such conversation before it is competent to give evidence of his declarations. And more than that, the witness says at the commencement that he is unable to state with reference to what estate this remark was made; now, it seems to me, it is irrelevant and unfair to introduce such evidence. Mr. Brown has gone away and the counsel knows it; no rule of law will certainly allow evidence of this kind.

Mr. E. H. PRINDLE — I barely desire to prove what Mr. Brown said about the matter.

Mr. PECKHAM — That is the very thing that we object to, Mr. Brown's attention not having been called to it at all in any form or manner.

Mr. E. H. PRINDLE — If it is objected to on the ground that Mr. Brown's attention was not called to it, I won't press it; because I concede, myself, under the strict rule of law, it would not be proper.

The PRESIDENT — Have you other witnesses?

Mr. E. H. PRINDLE — We have a few, but we do not wish to swear them until they close their case.

The PRESIDENT — You should go on with your defense.

Mr. E. H. PRINDLE — We do not know what their evidence is to be, and we should be a little in the dark to go on with our evidence.

The PRESIDENT — Have you any evidence except to rebut what you suppose they will prove?

Mr. E. H. PRINDLE — We have possibly, but we are a little in the dark. We do not like to put witnesses upon the stand until we know what this evidence is.

Mr. PECKHAM — The gentleman knows what the character of the evidence is; it is simply with reference to the contents of those records.

Mr. E. H. PRINDLE — We don't know that we have any witnesses to call except such as will be witnesses upon that point.

Mr. PECKHAM — I understand Mr. Stanton, that he has inquired of these gentlemen who are pursuing the investigation, and they

say it will take them until night, the best they can do, three of them working at it.

Senator ROBERTSON — Do I understand that they are to be ready at eight o'clock.

Mr. STANTON — The gentlemen are unable to tell exactly; they say they cannot get through until some time in the evening.

Senator ROBERTSON — I think we should have an evening session.

Senator BOWEN — Mr. President: I would like to inquire if neither party are ready to proceed now; if not, I move that we take a recess until eight o'clock this evening.

Senator ROBERTSON — I hope we will not, Mr. President.

Senator BOWEN — I will withdraw the motion in order to have the question put on going into executive session.

Senator WINSLOW — I move we take a recess until eight o'clock.

The PRESIDENT put the question whether the senate would agree to said motion of Mr. Winslow, and it was determined in the affirmative.

The Senate reconvened at 8 P. M. (July 11.)

Senator LEWIS — Mr. President: I move the sergeant-at-arms be requested to step out and invite senators in.

Senator D. P. WOOD — And invite counsel too.

The PRESIDENT — The sergeant-at-arms will step out and request senators to step in.

Senator D. P. WOOD — The counsel are in the back room.

Senator LEWIS — Mr. President: I move we go into executive session.

Senator WINSLOW — Mr. President: There are some senators here that might want to participate in the confirmation, or whatever business we do in executive session.

Senator JAS. WOOD — We are not going to have any confirmation.

Senator WINSLOW — It is to receive messages from the Governor.

Senator PERRY — We may have confirmation.

Senator JAS. WOOD — I don't see it.

Senator WINSLOW — I suggest it be postponed for some time and then go on; I know Senator Madden is anxious to be present, and will undoubtedly be present within a few minutes.

Senator LEWIS — I would inquire whether there is any executive business?

The CLERK — There is.

Senator LEWIS — I mean any messages?

The CLERK — There are.

Senator LEWIS — The senators knew we were to sit here, and it seems to me if they desire to participate in the deliberations of this body they had better be on hand.

Senator PERRY — Yielding to the suggestion of Senator Winslow, it seems to me the absent senators ought to have an opportunity to be here. When we adjourned, there was no intimation we were going to have any executive business at the present moment, and it seems to me it is better to wait a few moments; I would like to have some of the absent senators here.

Senator WINSLOW — Mr. President: I move as an amendment to the motion of the senator from the thirty-first (Mr. Lewis) that we go into an executive session at thirty minutes past eight; that will give those absent an opportunity to get in. I have no feeling about it myself; I think it is very proper we all should have an opportunity to be here.

The question was put on the amendment of Senator Winslow, and declared lost.

Senator WEISMANN — Mr. President: It seems to me we cannot go into executive session, as there is no quorum present; it seems to me there ought to be a quorum.

The PRESIDENT — Does the senator raise that point?

Senator WEISMANN — I raise that point.

Senator LEWIS — By the time we get the room cleared they will be here, probably.

Senator WEISMANN — I withdraw my motion.

Senator LEWIS — I call for the calling of the roll.

The PRESIDENT — The Clerk will call the roll.

The CLERK called the roll, when the following senators were found to be present:

Messrs. Benedict, Bowen, Cock, Dickinson, Foster, Lewis, Lowery, Perry, Tiemann, Weismann, Winslow, D. P. Wood, J. Wood, Allen.

The CLERK — Fourteen senators present.

The PRESIDENT — There is no quorum present, and there can be no business transacted.

Senators Robertson and Palmer here entered the Senate chamber.

Senator D. P. WOOD — I would like to inquire of the counsel for the prosecution whether the evidence that was being prepared by the examination of records is ready?

Mr. STANTON — We are prepared to give it now if the Senate is ready.

Senator D. P. WOOD — If there be present a quorum, I move that we proceed.

The PRESIDENT — The Clerk will announce the number of senators present.

The CLERK — Sixteen senators present.

The PRESIDENT — The Chair decides that no business can be had until seventeen senators are present.

The SERGEANT-AT-ARMS — Senator Lord is at tea; I saw him; he will be in after tea.

Senator ROBERTSON — I saw Senator Lord as I came over, and he said he would be here in a moment.

Senator LEWIS — I would like to inquire of the senator from the ninth (Mr. Robertson), about how long he thinks it will be before Senator Lord will be through his supper?

Senator ROBERTSON — I should think in the course of twenty-five or thirty minutes.

The SERGEANT-AT-ARMS — There are no senators around the capitol or hotel, or grounds; I will go down town if it is advisable.

The question being put, it was declared carried.

After spending some time in executive session the Senate resumed the pending business.

ALBERT F. GLADDING recalled on behalf of the prosecution:

By Mr. STANTON:

Q. Mr. Gladding, you have examined the records and papers produced by the respondent here, under the order of the Senate, have you? A. I have, sir.

Q. State what papers there are that you have examined? A. I have examined the petitions for the appointment of guardians, petitions for letters of administration, and petitions for letters testamentary and letters of administration with the will annexed, for the years 1864, 1865 and 1866, and a portion of 1867.

Q. Down to what time in the year 1867? A. Down to April 24, 1867, I believe it is.

Q. Wasn't it the 25th? A. Yes, sir; April 25, 1867.

Q. Have you also examined the records of letters of guardianship, issued during those years? A. Yes, sir.

Q. From the 1st of January, 1864, to the 25th of April, 1867? A. Yes, sir.

Q. Will you state how many of the petitions for letters testamentary, issued in the year 1864, stated that the amount of the personal estate was less than the sum of $500? A. Didn't exceed $500?

Q. Yes, sir. A. In the year 1864 there were forty-nine letters testamentary issued, eight of which were of estates that did not exceed $500.

Q. The petitions for the granting of those letters, in eight of them, were so stated? A. Yes, sir; that of estates that did not exceed $500.

By Mr. E. H. PRINDLE:

Q. What were those; petitions for letters testamentary? A. Yes, sir.

By Mr. STANTON:

Q. Now, sir, state how many there were in the year 1865? A. In 1865, there were fifty-one letters testamentary issued, and nine of these were represented in petitions to be of estates not exceeding $500 in value.

Q. State for the year 1866? A. From January 1, 1866, to April 24, 1866, there were issued of letters testamentary, seventeen, and six of them were represented by the petitions to be of estates not exceeding $1,000 in value.

Q. Why do you stop at April 24, 1866? A. At that time, as I understand it, the law was changed, so that after that, on estates not exceeding $1,000, there were no fees; up to that time, estates not exceeding $500 there were no fees.

Q. State how many letters testamentary were issued from the 24th of April, 1866 (during the remainder of the year), and then how many of them were upon estates, as shown by the petitions, upon estates less than $1,000? A. There were twenty-three letters testamentary issued during the balance of that year, and five of those were upon estates upon which the petitions represented the value as not exceeding $1,000.

Q. State for the year 1867, down to the 25th of April? A. There were fourteen letters testamentary issued, and one was represented by the petition to be upon an estate of less than $1,000; not exceeding $1,000 in value.

Q. State letters of administration with the will annexed during the same years? A. In 1864, there were forty-seven letters of administration issued, fourteen of which—

Q. That is in letters of administration with the will annexed? A. No, sir; fourteen of which were upon estates not exceeding $500 in

value; in 1865, there were fifty-eight letters of administration issued, eighteen of which were upon estates not exceeding $500 in value; from January 1, 1866, to April 24, 1866, twenty-five were issued, and five were upon estates not exceeding $500 in value; from April 24, 1866, to January 1, 1867, eighteen were issued, and nine were upon estates not exceeding $1,000 in value; from January 1, 1867, to April 25, 1867, eleven were issued, and three were upon estates not exceeding $1,000 in value; in 1864 there were three letters of administration issued with the will annexed, all over $1,000 in value; in 1865 there were four letters of administration with the will annexed, all over $1,000 in value.

Q. You mean by that, that petitions in none of those cases stated that the estates did not exceed $1,000 in value? A. Yes, sir.

Q. Isn't it $500 that you mean, instead of $1,000? A. There were none less than $1,000; I put it down so; that covers the whole of the year 1866; I say these letters of administration with the will annexed, that none of them during the year 1865 were less than $1,000.

Q. That is, the petition did not state they were less than $1,000? A. That is what I mean to be understood; in 1866, three were issued, and one of them, issued after April 24, 1866, was less than $1,000 in value; there were none issued in 1863 down to April 25.

Q. I didn't understand the last evidence you gave in reference to the year 1866, subsequent to April 24? A. I say, during the whole year 1866, there were three letters of administration with the will annexed issued, and one of those issued subsequent to April 24 was less than $1,000 in value.

Q. State the number of letters of guardianship issued during the year 1864? A. Fifty-three.

Q. How many of those were for the purpose of obtaining bounty, or prize money, or arrears of pay? A. There were six of them.

Q. How many were issued in the year 1865? A. Fifty-two, and six of those were for bounty or arrears of pay, or prize money.

Q. How many in 1866? A. During 1866 there were sixty-seven issued, nine of which were for bounties or pensions, arrearages of pay, or prize money.

Q. How many were issued in the year 1867, down to the 25th of April? A. Thirteen, and four of them were for bounties or pensions.

Q. Who made this examination with you? A. Mr. Edward B. Thomas assisted me.

Q. Did you look at the petitions yourself? A. There were a few of the petitions for letters testamentary that he examined himself.

Q. And called them off to you? A. Yes, sir.

Q. And you made a note of them? A. I think there were a few he made a note of himself; mainly we were sitting side by side, and he called them off and I made a memorandum of such as we desired to use in making up our final statement.

Cross-examined by Mr. E. H. PRINDLE:

Q. You say that in the year 1864 there were forty-nine letters testamentary issued? A. Yes, sir.

Q. In how many of them were the real and personal property put together and not separated in stating the amount? A. In the petition?

Q. Yes, in the petition? A. I can't say.

Q. Were there any? A. I can't say.

Q. You cannot say whether there were any that stated that the real and personal property would not amount to such a sum? A. There were eight that stated that the real and personal property would not exceed $500.

Q. How many spoke of personal property? A. Alone?

Q. Yes, sir. A. As not exceeding $500?

Q. Yes, sir. A. I cannot tell.

Q. How many said any thing about any property? A. That I can't tell.

Q. Were there any? A. I do not know, sir.

Q. How many were there in 1865, where the real and personal property were put together? A. I can't say.

Q. How many were there that said nothing about property? A. I can't say.

Q. How many were there that stated the personal property would not exceed $500? A. I can't say.

Q. How many were there in 1866, up to April 24th, that said any thing about property at all? A. I can't say.

Q. How many were there in 1866, in which the real and personal property were put together? A. I can't tell that.

Q. How many were there in 1866 that stated that the personal property would not exceed $500? A. That I can't say.

Q. How many were there from the 24th of April that said nothing about the value of the property? A. I can't say.

Q. How many were there that put the personal and real property together, and estimated them together? A. I can't say.

Q. How many were there in which the personal property was estimated at less than $1,000? A. That I can't say.

Q. How many were there in 1867 which said nothing about property? A. That I can't say.

Q. How many were there in which the personal property was estimated less than $1,000? A. That I can't say.

Q. How many were there in which the personal and real property were estimated together? A. How many in all?

Q. Yes, sir. A. That I can't say.

Q. How many petitions for letters of administration for the year 1864 that said nothing about property? A. That I can't say; my answer would be the same to all similar questions.

Q. Your answer is the same that you have given for the previous years, in regard to 1864; in regard to the letters of administration for the year 1864; I will ask you the question? A. I say my answer is the same.

Q. I will ask you the question; how many petitions for letters of administration for the year 1864 stated any thing about the amount of property? A. I can't say.

Q. How many estimated the real and personal property together? A. I can't say.

Q. How many stated that the personal property would not exceed $500? A. That I can't say..

Q. How many petitions for letters of administration in 1865 said any thing about the amount of real and personal property? A. That I can't say.

Q. How many estimated the real and personal property together? A. That I can't say.

Q. How many stated the personal property to be less than $500, or not exceeding $500? A. That I can't say.

Q. How many from January 1st to April 24th said any thing about the amount of property? A. I can't say.

Q. How many estimated the real and personal property together? A. I can't say.

Q. How many stated that the personal property would not exceed $500 or $1,000? A. I can't say.

Q. In the year 1867, how many petitions for letters of administration stated nothing about the value of the property? A. I could not say.

Q. How many estimated the personal property at not to exceed $1,000? A. That I cannot say.

Q. How many letters of administration with the will annexed, in 1864, stated nothing about the real or personal property? A. There were not any.

Q. They all stated something about the real and personal property? A. Yes, sir.

Q. How many estimated the real and personal property together? A. I couldn't say.

Q. How many stated that the personal property was less than $1,000? A. I couldn't say.

Q. In 1865, how many letters of administration with the will annexed stated nothing about the value of the property? A. I couldn't say.

Q. How many estimated the real and personal property together? A. That I couldn't say.

Q. How many stated that the personal property was less than $1,000, or not to exceed $1,000? A. That I couldn't say.

Q. In 1866, how many letters of administration with the will annexed stated nothing about the value of the property? A. I couldn't say.

Q. How many estimated the real and personal property together? A. That I can't say.

Q. How many stated that the personal property was not to exceed $1,000? A. That I cannot say.

Q. You say there was one after April 24, 1866, that stated that the personal property was less than $1,000? A. No, I didn't say so.

Q. That the real and personal property was less than $1,000? A. Yes, sir.

Q. How many petitions, or were you speaking of letters of guardianship? A. Yes; I spoke of the letters of guardianship.

Q. When you say these fifty-three in the year 1864, which do you mean? A. I had the record of fifty-three letters of guardianship.

Q. How many petitions were filed? A. I could not say now; I examined all the petitions that there were.

Q. I ask you how many petitions for letters of guardianship in 1864 were filed; how many did you find? A. I didn't count them.

Q. Can you tell how many petitions for letters of guardianship, 1864, stated that the letters were desired for the purpose of obtaining bounty or arrears of pay? A. I can state the number of petitions that stated that, upon which there were letters of guardianship afterward issued and recorded.

Q. I ask you what the petition stated; did you look at them? A. Yes, sir.

Q. Did you count to see how many there were that stated that the petitions were made for letters for the purpose of obtaining bounty and arrears of pay? A. Yes, sir.

Q. How many were there? A. Of those where the letters were afterward recorded?

Q. I didn't ask you that? A. There were a number of petitions in which it was stated that the guardians were desired for the purpose of signing his petition papers of which there was no record afterward, and those were not counted in my fifty-three.

Q. Then you can't tell how many there were? A. No, sir; not of those.

Q. How many petitions did you examine for 1864? A. For the appointment of guardian?

Q. Yes. A. I cannot say.

Q. How many for 1865? A. I cannot state.

Q. How many for 1866? A. I cannot state.

Q. How many for 1867? A. I cannot state.

Q. How many were there that said it was for the purpose of enlisting into the army that the letters were desired? A. I cannot say.

Q Or 1865? A. I cannot say.

Q. Or 1866? A. I cannot say.

Q. Or 1867? A. I cannot say.

Q. How many said nothing about enlisting in the army, or bounty or back pay, or any thing of that kind, petitions for letters of guardianship in 1864? A. Well, that I cannot state now.

Q. How many in 1865? A. I cannot state.

Q. How many in 1866? A. I cannot state.

Q. How many in 1867? A. Nor that.

Q. How many of the persons for whom letters of guardianship were desired in the petitions were of the same family? A. There were forty-six.

Q. 1864 I am speaking of? A. I haven't a memoranda of the number in each year; it is not separated.

Q. Do you know how many persons for whom petitions were made in 1865, belonged to the same family? A. No, sir.

Q. Or in 1866? A. No, sir.

Q. Or in 1867? A. No, sir; not in any year separated.

Q. Or the whole of them together? A. Yes, sir; I do.

Q. How many belonged to the same family, do you understand me, for instance two persons belonging to the same family make petitions? A. There were forty-six cases in which guardians had

been appointed for more than one ward, belonging to the same family.

Q. That is in the whole number of years? A. Yes, sir; in the whole number that I have stated here.

Q. Please state that again? A. There are forty-six cases in which guardians have been appointed for more than one ward belonging to the same family, or the same name, and I take it they belong to the same family.

Q. How many of the same family where there are different guardians? A. I can't say.

Q. How long have you been practicing law? A. Two years and a half I should think, without stopping to figure.

Q. You studied law with Mr. Follett? A. Yes, sir.

Q. And have remained in the office ever since? A. Yes, sir.

Q. Got your office there now? A. Yes, sir.

Q. Have you had much surrogate business to do yourself? A. No, sir; not very much.

Q. Very familiar with surrogate's practice? A. Well, I should say not very.

Q. Did you come here for the purpose of making this examination at this time, to be a witness? A. Well, I came here at the request of Mr. Stanton; I don't know exactly what he desired.

Q. To do whatever he required? A. To do whatever he wished me to do.

Q. To swear or any thing else? A. Yes, sir.

Q. How many letters testamentary were issued in 1864? A. Forty-nine.

Q. How do you know? A. Well, I examined the books.

Q. When? A. Examined the books in Norwich a couple of weeks ago, I should say; have the records of them in my pocket now.

Q. You say there were forty-nine? A. Forty-nine, sir; that is, there are forty-nine on record.

Q. How many of the petition for letters of administration, in 1865, stated that the value of the personal property would not exceed $500? A. I have already told you I could not state that.

Q. Have you any memorandum of it at all? A. That the personal property alone did not exceed $500?

Q. Yes. A. No, sir, I don't know that I have.

Q. Nor for the year 1864? A. No, sir.

Q. Nor any of the years? A. No, sir.

Re-direct examination by Mr. STANTON:

Q. Mr. Gladding, you have examined the records of letters testamentary and letters of administration, and letters of administration with the will annexed, in the surrogate's office, some little time since, haven't you? A. Yes, sir.

Q. You find here petitions produced by the respondent where you have found no record of letters issued upon those petitions, have you? A. Yes, sir, in some of those.

Q. And in the numbers that you have counted, when you say so many letters were issued during last year, you have only counted such as appeared to have been issued by the record of the letters themselves? A. Yes, sir, that is it.

Q. And these petitions which appear in these packages produced here, where no letters appear to have been issued upon them, you did not count? A. No, sir, did not count them at all.

Q. Now let me call your attention more particularly to your examination during the year 1864, down to the 30th day of April; did you not look at the petitions during that time of letters testamentary and letters of guardianship, to see how many stated that the personal estate alone did not exceed the sum of $500? A. No, sir; I did not make that examination.

Q. Then you will have to make the examination over? A. There will be but a few of them; some half dozen to be examined, or perhaps a dozen.

Q. You say there were forty-six cases during the years from the 1st of January, 1864, to the 25th of April, 1867, in which letters of guardianship have been issued where there was more than one ward of the same family? A. Yes, sir.

Q. Does this number, forty-six, that you state, include all of the wards during those years? A. No, sir; I will show you; there is a person there who was appointed a guardian for two wards, that is one of those cases; there is a person who was guardian for three or four wards, that is one of those cases also.

Q. And there are forty-six of those cases where there has been one guardian appointed for two or more wards in the same family? A. Yes, sir; and I will state further, that there are fifty-three wards of whom some other ward has the same guardian.

Q. You examined all of these petitions that were presented by the respondent? A. I have, sir.

Q. And you examined them carefully as to these questions, to which you have testified? A. Yes, sir.

Re-cross-examination by Mr. E. H. PRINDLE:

Q. How many letters of guardianship do you say there are; give me the times now and the numbers? A. I say there are forty-six cases in which the same guardian appears for more than one ward.

Q. Now, sir, how many families are represented in those forty-six cases? A. I couldn't state positively, but I think forty-six families.

Q. Do you know any thing about it? A. I only know from the names; they are the same.

Q. Have you counted up the names to see how many families there are? A. Yes, sir.

Q. With that view? A. Yes, sir.

Q. How many different family names will you swear there are among those wards? A. That I can't say.

Q. Will you swear that all those wards did not belong to forty families? A. Oh, I presume they belonged to a great many more than that.

Q. I ask you if you will swear? A. I have already stated that I don't know just how many there were in the whole number of wards.

EDWARD B. THOMAS, recalled:

By Mr. STANTON:

Q. You made this examination with Mr. Gladding? A. Yes, sir.

Q. And did some of the calling off to him? A. Yes, sir.

Q. And did it correctly, did you? A. Yes, sir.

Cross-examination by Mr. E. H. PRINDLE:

Q. What did you call off? A. I called off first the wards and the guardians.

Q. The wards of the guardians? A. No, sir; didn't say that, Mr. Prindle; I called off the wards and the guardians of the wards, and the date of the petition for letters of guardianship; I then called off the letters testamentary; I took the petitions for letters testamentary and called off the amount of property estimated in the petition; a few of those.

Q. Called off a few of them? A. Yes, sir; a few of those to him; perhaps one-third of them.

Q. You don't know what portion of them you did call off? A. I can tell by looking at the paper.

Q. State what further you called off? A. I also looked over the letters; the petition for the appointment of guardians, and examined

to see whether the guardian was appointed for the purpose of enlistment or for obtaining bounty or arrears of pay; I think that was all.

Q. How many did you call off of that kind? A. I couldn't tell, sir; he took it down, sir.

Q. Do you know whether he took it down correctly or not? A. I do not, sir.

Q. Did you look over these? A. Well, we looked over them together.

Q. You looked them over together? A. Yes, sir.

Q. Those that you called off? A. No, sir; I showed them to him; I took them up and opened them, and we sat together and he looked them over with me.

Q. Then you called them off? A. Yes, sir.

Q. Couldn't he see as well as you? A. He had to do the writing; I then folded up the papers and laid them aside.

Q. Do you know any thing about the number of these petitions for guardians; that it is stated that letters were applied for for the purpose of enlistment, or bounty, or back pay? A. No, sir; he made the calculation entirely.

Q. Do you know any thing about the matter except as you called off what you saw? A. Of the petitions for the appointment of guardians?

Q. Yes. A. No, sir.

Q. Or for letters of any kind? A. Letters testamentary?

Q. Well, what do you know about those? A. Well, sir, I looked over them with Mr Gladding as he marked them; I looked to see what estates were estimated not to exceed $500 and $1,000.

Q. How many were there? A. I could not tell you without looking at the paper.

Q. Can you tell by looking at the paper? A Yes, sir.

Q. Did you see how many there were the personal estate of which would not exceed $1,000? A. The real and personal?

Q. Did you look to see how many there were in which the personal estate would not exceed $1,000? A. Yes, sir; real and personal, where the petition estimated personal property separate from the real and personal, I put it down.

Q. You did, eh? A. Yes, sir; but there were very few of those cases, and we understood that we were to look only at the estimate of real and personal together.

Q. Did you or Mr. Gladding keep any record of the number where the personal was separated from the real estate; did you keep any record at all of it? A. Yes, sir.

Q. Who has got that now? A. Mr. Gladding.

Q. You are sure of that? A. Yes, sir.

Q. You and Mr. Gladding don't agree on that? A. Oh, he didn't; I made that calculation; I did that myself; but in calculating them, he took the real and personal together, because we understood from Mr. Stanton that that was what he wanted.

Q. Do you know how many there were where there was nothing said about property at all? A. I couldn't give the exact number; there were a very few; it was unnecessary to look at that, I supposed.

Q. What makes you think so? A. I don't think that the law intends it.

Q. How long have you been a lawyer? A. About two years.

Q. Where do you practice? A. In Norwich.

Q. In what office? A. In Mr. Follett's.

Q. Did you come here for the purpose of being a witness? A. No, sir.

Q. What did you come here for? A. I came here from New York last night, and stopped here, and came in the Senate this morning, and Mr. Stanton asked me to assist him in looking over; that's all.

Mr. E. H. PRINDLE — It is nearly 10 o'clock, and I am about sick myself, and would like to adjourn until morning.

The PRESIDENT — The counsel for the defense desires at this time to adjourn.

Senator D. P. WOOD — It is now nearly 10 o'clock, and we have done a pretty fair day's work. I move that we adjourn, not only for the convenience of the counsel, but for our own comfort.

The PRESIDENT put the question, and it was decided in the negative.

Senator D. P. WOOD — I call for a count.

The PRESIDENT — After the Chair has announced its decision it is too late for a count.

Senator D. P. WOOD — I move to reconsider the vote.

Senator BENEDICT — Mr. President: I only rise to say that the gentlemen who are conducting the defense have been quite out of sorts all day with ill health, and it seems to me that we ought to adjourn for their consideration; I should like to sit here until midnight, and go on with this thing myself, but those gentlemen, I happen to know, have been out of sorts to-day, and I do not think we should press them.

Senator ALLEN — I move the Senate do now adjourn.

The PRESIDENT put the question, and it was decided in the affirmative.

Senate met pursuant to adjournment, at 9 A. M., Friday, July 12, 1872.

B. GAGE BERRY recalled by the respondent:

By Mr. E. H. PRINDLE:

Q. Are you one of the editors and proprietors of the Chenango Democrat? A. Yes, sir.

Q. Formerly clerk of the board of supervisors? A. Yes, sir.

Q. During the years 1865 and 1866? A. Yes, sir.

Q. Was there an understanding or talk among the supervisors of those years, that the estimated report of the county judge was received in consideration of the smallness of the salary, and to allow for fuel, lights, postage and incidental expenses; I ask you to state your information on that point; your recollection?

Mr. STANTON — I don't suppose that is pertinent in this case; if they have any public acts of the board, any resolution or action by the board, or such, I suppose that would be competent, perhaps, although not binding; but some casual conversation he may have heard from some supervisor, or some party, some time, will hardly be evidence here. We object to the evidence.

Mr. E. H. PRINDLE — Mr. President: The amount of talk that this witness has heard, the amount that he knows in regard to this understanding, remains of course to be seen; the question is, whether the character of the evidence is proper; now, I understand and in fact I have heard the counsel claim in response to an inquiry of a senator, that he expected to show there was a fraud on the part of the county judge in making these estimated reports in the manner that they were made; what we propose now to prove is, there was no fraud; that there was no deception of the supervisors, or of the board of supervisors, and that they understand precisely the manner in which these reports were made; why they were made for those two years in that way; that they acquiesced in it; that it was in substance agreed to; that the formality of the report was waived, and although it may not be strictly regular, we most earnestly insist that it shows there was no corruption and no fraud.

Senator BENEDICT — What was the question?

Mr. PRINDLE — The question is, was there an understanding or talk among the supervisors for the years '65 and '66 that the estimated report wa sreceived in consideration of the smallness of the salary and to allow for fuel, lights, postage and other incidental expenses on the part of the county judge; we want to put these questions to the witness and supervisors for the purpose of removing any suspicion.

Senator TIEMANN — Out with it.

Mr. E. H. PRINDLE — And to show it was discussed when the matter was acted upon.

Senator LEWIS — Mr. President: I desire to make an inquiry; does the counsel claim that was an understanding between the supervisors and Judge Prindle?

Mr. E. H. PRINDLE — Yes, sir.

Mr. STANTON — Do you claim that this was any public act of the board or done by the board as such; does the counsel mean there was any formal resolution of the board to that effect?

Mr. E. H. PRINDLE — I don't claim that; I only offer the evidence to show there was no fraud, and no deception, and no corruption.

The question was put as to whether the objection should be sustained, and it was declared in the negative.

Q. State your recollection on that point? A. Perhaps, Mr. Prindle, I had better state the fact as I recollect it; I cannot answer the question yes or no.

Q. I merely ask you to state your recollection of it? A. My impression is — however it is not strong enough for me to swear to it absolutely — that in '64 the report was a detailed report.

Senator LEWIS — Repeat that. A. My impression is that the report of '64 was an itemized report; but in '65, when the report was brought to me by the county judge, I called his attention to the fact that it was not a full itemized report; he responded to me: "If that is not proper, the board or committee will call upon me for a further report," in substance; Mr. Prindle left the desk, and upon the chairman of the board coming in, I also called his attention to the fact that the report of Judge Prindle that year was not a full itemized report, giving the items of each case.

Senator LEWIS — What year was that? A. 1865, if I remember aright; it was the first year any such report was handed in; he says all right, it may be a little irregular; refer it to the committee when the board come together; the board came together and the report was referred in the regular order, and at a subsequent meeting was

reported upon by the committee, and the balance due to the judge audited and passed by the board; it has been the habit since that time for Judge Prindle to present his report, fixing the balance, the committee auditing the balance, and that acts as a sort of settlement, between the judge and the committee, as to the amount; I think at the next recess after the passage of the report by the committee (passing upon the report of county judge); I think at the next recess, though I am not quite confident as to the time, but very soon after; at one recess the question came up by half a dozen supervisors or more (we were doing committee work in the main room), upon the question of the report; one or two supervisors expressed their dissatisfaction with the report; said it was not such a report as they ought to have; that they ought to have a full and detailed report; others said it is all right; that is allowed to be made so this year to cover the incidental expenses of the office; coal, lights, etc.; I don't of course, I do not endeavor to, give the words of any gentleman; but that was the idea I got from the conversation that I heard; in 1866 a similar report was made, and was passed by the board, and I heard no comment then in regard to it.

By Senator TIEMANN:

Q. Got used to it then? A. Got used to it.

Q. The committee reported favorably the report? A. Yes, sir.

Q. And the balance was audited and passed by the board? A. Yes, sir.

Q. That is the case in both years? A. Yes, sir.

Q. Is that the amount reported (showing the witness a book) by Judge Clark the year previous to '63?

Mr. PECKHAM--We object to what was reported by Judge Clark, as immaterial.

The PRESIDENT—Does the counsel for the respondent press the question?

Mr. E. H. PRINDLE—Yes, sir.

Mr. MYGATT—He was the former county judge, and it is offered as a precedent.

Senator LEWIS—I would like to ask the counsel upon what theory he claims it is admissible?

Mr. E. H. PRINDLE—I don't know that it is, except that it may throw some light on the amount that ought to be reported.

Senator D. P. WOOD—Mr. President: I would like to have the question either repeated or read by the stenographer.

The STENOGRAPHER (Mr. Tanner) read the question, as follows: "Is that the amount reported by Judge Clark the year previous to '63?"

Mr. E. H. PRINDLE—It seemed there is some light upon the question as to the amount that ought to be reported.

(The question was put upon the objection and declared sustained.)

Cross-examination by Mr. STANTON:

Q. You have stated that you heard some supervisor dissent from this report of Judge Prindle made for the year 1865; it was the year 1865? A. Yes, sir.

Q. What supervisor was that that dissented? A. I cannot give you his name.

Q. Where was he when he gave his dissent? A. In the main room of the supervisors.

Q. Have you given the language that that supervisor used on that occasion? A. No, sir.

Q. Can you give it now? A. No, sir.

Q. Can you give any thing else that he said at that time? A. No, sir.

Q. You cannot tell who it was? A. No.

Q. Who was the supervisor that said it was all right—that it should be allowed to pass in the shape it was, on account of the expenses of his office? A. I cannot tell; there were, as I remember, a half a dozen of the supervisors in the room; some committee was at work there, and the remark was made by one individual, some individual, I don't know who, that the report of the county judge wasn't an itemized report as we had heretofore; that it ought to be different; the other men said it was all right, and that it covered the incidental expenses, and left in that way.

Q. What do you mean by that "incidental expenses?" A. What I heard there is all that I know; do you want to know what I heard there?

Q. Yes, sir. A. I cannot tell you intelligently from what I heard there; I knew the fact that the judge had made no charge in any other place for the coal, and I think the gas bill wasn't brought in by the gas manufacturer against the surrogate's office; it was to cover those expenses.

Q. Did you know what the resolution of the board of supervisors was in reference to these expenses? A. What resolution?

Q. The resolution of the board, fixing his salary, you knew what it was? A. Yes, sir.

Q. The supervisors did? A. I presume they did.

Q. I don't ask you to state it unless you have a copy of it; can you state any other conversation that was had at that time, in the persons of those members of the board? A. No, sir; and I don't wish you to understand that I am stating the conversation there; I am only stating the result of the conversation.

Q. Was it also talked there, that Judge Prindle had not reported the full amount of the fees that he ought to have reported, or any thing to that effect? A. No, sir.

Q. You didn't hear any thing of that kind? A. No.

Q. Why was it said that it was to cover incidental expenses, and all right on that account? A. I supposed the person who made the statement understood that the report was not a full detailed report, covering the last dollar, and that the deficiency, if any, was to go toward those expenses.

Q. That it was not a report covering the last dollar; you mean the last dollar of fees that should have been returned? A. Yes, sir.

Q. You say it was understood that he hadn't returned or reported all the fees that he ought to have reported in that court; do you mean to say that? A. I mean to say this, that it was understood that this report should be received, and that if there was any difference between the last dollar received, the entire amount received that should have been reported, and the amount shown by the report, that that was to apply upon the incidental expenses; I don't mean to be understood that anybody in my presence, or to my knowledge, said that the report was deficient in any amount; I don't know that it was.

Q. I fail to understand your evidence, unless that is the substance of it; is it not that these supervisors talked that he hadn't reported as much fees as he had received, and they had let the excess which he had failed to report go upon incidental expenses; is that the idea? A. That is the idea, substantially; but I don't wish to be understood as swearing that any supervisor claimed that he hadn't reported the amount of fees.

Q. But if he didn't report? A. But if there was any, it was to apply upon these incidental expenses.

Q. That was the reason why no further investigation was made of this report? A. That is the way I understood it.

Q. Was there any action taken by the board upon that question? A. No, sir, except the approval of the report and the auditing of the account.

Q. Do you recollect the report that was made upon those accounts? A. No, sir.

Q. Was there any report made? A. Yes, sir.

Q. Does any report appear to have been made upon the supervisors' books? A. I cannot recollect; I know simply from the habit.

Q. Can you tell that there was any made by the committee of the board of supervisors for the year 1865 as to their examination of the judge's accounts? A. No; independently of the minutes.

Q. Have you examined the minutes? A. I have examined the printed report.

Q. Do you find upon that printed report any record of the report of the committee that had investigated the accounts of the county judge for that year? A. Yes, sir.

Q. Will you produce it here? A. (Referring to printed book of proceedings of the board of supervisors for the year 1865) I think I am mistaken about finding any printed report; upon examining the proceedings I find the report of the county judge in full, spread upon the minutes.

Q. Will you read it?

The witness read as follows:

"Mr. Philley presented the annual report of the county judge as follows:

COUNTY OF CHENANGO IN ACCOUNT WITH H. G. PRINDLE, COUNTY JUDGE.

1865.	*Cr.*	
By cash received for proving wills and blanks		$283 50
By cash received for granting letters of administration and blanks		116 50
By cash received for appointing guardians, and blanks		65 00
By cash received for miscellaneous business, not included in the above		60 00
		$525 00
	Dr.	
To salary for one year		$1,400 00
To record books		65 00
		$1,465 00

Contra Credit.

By amount received as above	$525 00	
By cash of county treasurer	737 75	
		$1,262 75
Balance due H. G. Prindle		$202 25

The amount due me on settlement of 1864 of $300 has been paid by the county treasurer.

All of which is respectfully submitted,

H. G. PRINDLE,
County Judge.

CHENANGO COUNTY, *ss.:*

H. G. Prindle, being duly sworn, says, that he has received the fees as stated in the foregoing account; that the items for services and disbursements therein charged are as stated therein, and no part of the same has been paid except as therein stated.

H. G. PRINDLE.

Sworn before me,
Nov. 21, 1865,
J. G. THOMPSON,
Clerk Chenango County.

[Stamp.]

Q. Now, sir, do you find any record of any action taken by the board upon that report, or the report of any committee that had been appointed to investigate it for that year? A. I do not, sir, in looking over the proceedings hastily, and I have looked pretty thoroughly.

Q. You stated a short time ago that you had no recollection independent of the record? A. Independent of the record, as to the amount.

Q. You answered that, I believe, in reply to my question as to the making of a report by a committee? A. Yes, sir.

Q. Now, sir, do you say that you have a recollection at this time independent of the record? A. I have no recollection independent of the record, except the custom, the regular custom and habit of the board.

Q. Is that the report that you have just read, about which you heard this conversation that you have detailed in your evidence? A. 1865; yes, sir.

Q. During the year 1865 what office did the county judge occupy? A. The county office.

Q. Do you know whether he paid any rent to the county? A. I never heard of his paying any.

Q. And he never did, did he? A. No, I believe not.

Q. How long did he occupy that office? A. From the commencement of his term of office until the present time.

Q. He has always occupied that county office, has he? A. Yes, sir.

Q. And never paid any rent? A. Not that I know of.

Q. Did you hear any conversation similar to that to which you have already testified by the members of the board in reference to his report for the year 1866? A. No, sir; there may be a bare possibility of my having the two years mixed; I cannot undertake to say which year, whether it was the first or second year, that this report was made without being itemized that I heard the subject brought up; I think it was in 1865.

Q. You were one of the editors of the Chenango Telegraph? A. Yes, sir.

Q. And that paper supported Judge Prindle during the election very zealously? A. Certainly it did.

Q. And you worked very zealously for his support? A. Yes, sir, I did, in what I did on the paper; I worked as faithfully as I could in that.

Re-direct examination by Mr. E. H. PRINDLE:

Q. This report that you have read was presented by Mr. Philley, chairman of the committee upon the county judge's account? A. Yes, sir.

Q. Do you know the fact that Mr. Philley is out of the county now? A. He is somewhere in the west; I send a paper to him somewhere in the western States; where, I don't know.

Q. (Handing witness printed book of the proceedings of the board of supervisors of Chenango county for the year 1866) See if the report was not formally adopted, and whether the minutes of 1866 do not show it? A. Yes, sir, in 1866; on the ninth day's morning session the report of the county judge was presented and referred to the committee, and was, at the afternoon session, reported by Mr. Philley, the chairman of that committee; I will read from the minutes: "Mr. Philley reported the county judge's report and account as correct. Report adopted."

Mr. STANTON — Please read that report.

The witness read as follows:

Mr. Shepardson presented the annual report of the county judge as follows:

COUNTY OF CHENANGO IN ACCOUNT WITH H. G. PRINDLE, COUNTY JUDGE.

1865.	*Cr.*	
By cash received on proving wills and blanks		$250 00
By cash received, on granting letters of administration and blanks		90 00
By cash received, on appointing guardians, and blanks		60 00
By cash received for miscellaneous business, not included in the above		65 00
		$465 00
	Dr.	
To salary for one year		$1,400 00
To paid publishing terms of the county court in State paper		5 50
To record books		35 00
		$1,440 50
	Contra Credit.	
By amount received as above		$465 00
By cash of county treasurer		900 00
		$1,365 00
Balance due H. G. Prindle		$75 50

The amount due me on settlement of 1865, of $202.25, has been paid by the county treasurer.

All of which is respectfully submitted.

H. G. PRINDLE,
County Judge.

CHENANGO COUNTY, *ss.:*

H. G. Prindle, being duly sworn, says, that he has received the fees, as stated in the foregoing account; that the items for services and disbursements therein charged are as stated therein, and no part of the same has been paid, except as therein stated.

H. G. PRINDLE.

Sworn before me November the 20th, 1866.

D. HERRINGTON, *Chairman.*

By Mr. E. H. PRINDLE:

Q. Can you state whether the paper now shown you is a copy of the report made in 1867? A. I cannot state; I have no means of knowing whether it is a copy or not.

Q. Have you any recollection as to whether there were charges brought in the year 1867, and charged to the account? A. I am unable to recollect so as to give an intelligent answer to the question.

ANDREW SHEPARDSON, a witness called in behalf of the respondent, testified as follows:

By Mr. E. H. PRINDLE:

Q. Where do you reside, Mr. Shepardson? A. In the town of Smyrna, Chenango county.

Q. You are the present member of Assembly? A. Yes, sir.

Q. And chairman of the board of supervisors of Chenango county? A. I am, at present.

Q. How many years have you been chairman of the board of supervisors? A. Three or four years.

Q. And you were a supervisor in 1865 and 1866? A. Yes, sir; my first term was in 1865, I think, and I have been there every year since.

Q. You have heard the evidence of the last witness? A. I heard a portion of it only.

Q. Will you state what recollection you have in regard to the matter of the report being received, estimated in the way it was, and the reason for it; the reports of 1865 and 1866? A. I could not state positively in regard to it; all I can state is my impression from what I recollect of the circumstances; I know my attention was called to it by some members of the board, and I had conversation with some members in regard to it; I think I had also with Judge Prindle at the time; my attention was more particularly called to the affidavits; the affidavits were not stated as fully as the same affidavits drawn for ordinary accounts; and either Mr. Wheeler, the chairman of the board, or Mr. Harrington spoke of it, and one of the reasons was, that it was not given in items, and there might be some errors in regard to it, possibly, but that at any rate it was near enough right; and one excuse made was that there was some incidental expenses and matters of that kind that were not charged in; and that even if there were some things back that had not been allowed,

that those expenses would cover it all, and perhaps more too; the board, I believe, concluded that it was all satisfactory; concluded that there could not be much difference, and let it go.

Q. You cannot state the conversation? A. No, sir.

Q. But that was the talk? A. That was the talk at the time.

Q. But of those years? A. Well, there was one or two years mentioned that same way; I know it was my first year, and my recollection of that is, perhaps, better than some of the subsequent years.

Q. You were chairman of the board last fall, you have already stated; I wish to ask you whether the counsel for Judge Prindle, before the board of supervisors, urged the board to take the matter before Judge Boardman and have it decided?

Mr. PECKHAM — Let him state what was done.

Mr. E. H. PRINDLE — That is what we are about to do

Mr. PECKHAM — We deny that. There was no urging about it.

Mr. E. H. PRINDLE — Well, request.

A. Well, I cannot say that the counsel requested it; but my impression is, and my recollection is, that he said he should like to have it done; I don't know that he made the request that it should be done; my recollection is, that he said he would like to have the case go before Judge Boardman.

Cross-examined by Mr. STANTON:

Q. Mr. Shepardson, who was this conversation with, that you say you had with the other members of the board in reference to this report made in the Judge Prindle matter in 1865? A. I had conversation with several; I don't remember any besides those two; those I am sure I had conversations with.

Q. Do you mean to state that it was understood by the members of the board that that was not a report of the full amount of fees received by him? A. I mean to be understood that they were not certain that that was a full report; there might be something back.

Q. Do you mean to say that they agreed or assented to the proposition that it was right to have something back on account of expenses? A. They said it could not be far out of the way, taking all the incidental expenses into consideration.

Q. Now, sir, did you, as a member of that board, take the ground that that report was all right? A. No, sir.

Q. Did you take any action upon it as a member of the board? A. My impression is, that the report was adopted by the board; and still I cannot swear positively in regard to it.

Q. You don't know whether it was adopted or not? A. I think it was.

Q. Do you mean to say that that report was adopted without an investigation? A. There was no investigation more than what the committee had.

Q. Do you know what investigation they had? A. No, sir.

Q. Do you know whether there was any investigation made at the judge's office? A. I cannot say.

Q. Do you not know that there was not? A. I cannot say.

Q. Then you say there was a general understanding that there might be moneys in the judge's hands which he had not reported? A. Why, there was a possibility of it, certainly.

Q. There was talk among the supervisors in regard to it? A. Yes, sir; they said even if there was any thing back, there were some incidental expenses that might be charged in, so the amount could not be far out of the way.

Q. Do you know what the resolution of the board was that was in force at that time? A. I cannot say; I may have noticed it.

Q. You say that the report was not itemized, and understood by the board as not itemized as the law required? A. Yes, sir.

Q. And state you passed it? A. We did.

Q. You thought it was near enough right? A. Yes, sir.

Q. Do you know what the salary of the county judge was, and what the provisions of the resolution fixing it were, as in force at that time (1865)? A. I presume I knew what the salary was at the time.

Q. Was this the resolution: "*Resolved*, That the salary of the county judge and surrogate of this county be fixed at $1,000, and that he be allowed $500 for the hire of a competent clerk and office, and other incidental expenses. Mr. Haynes moved to strike out 'five' and insert 'four.' Amendment carried, and resolution as amended adopted." That is, strike out $500 and insert $400 for the hire of a competent clerk and incidental expenses; now, sir, did you know that that was the resolution in force at the time you say this conversation occurred? A. I have no recollection in regard to that; I was not a member of the board.

Q. You, as a member of the board, didn't know what the resolution was? A. I may have known it, but still I have no recollection about it; I heard the amount of the salary mentioned.

Q. Was there any reference made during the session of the board, that you now recollect, about the resolution of the board formerly

passed fixing the salary of the county judge? A. I cannot say that there was.

Q. You were chairman of the board of supervisors last fall, as you have stated? A. Yes, sir.

Q. Were you, as a member of the board, in favor of the investigation of the amount of fees received, or opposed to it? A. I was in favor of investigating the accounts.

Q. Do you recollect when the resolution was passed referring this whole matter to the Senate for their action? A. I do.

Q. Can you state whether all the members of the board were present at the time that resolution was passed? A. I think they were, with a few exceptions; there might have been two or three gone.

Q. Were these members who had formerly withdrawn under a protest present, or many of them present? A. Some of them were.

Q. That vote passed unanimously, didn't it; did no one dissent from the proposition? A. There was no ayes or nays called.

Q. It was passed without dissent, was it? A. Yes, sir.

Q. Was it not claimed, by the members who had entered a protest to any investigation, that this body was the body that had the authority to make the investigation, and the only body?

Mr. E. H. PRINDLE — We object to that; there is a protest, and they made it in writing; they made a written protest, and that is in evidence.

Mr. STANTON — We will not insist upon it; counsel have gone into evidence of this character without objection.

Mr. E. H. PRINDLE — Not of that character.

Mr. STANTON — We assume to do it because they did so.

Q. Do you recollect of any similar conversation among the members of the board of supervisors in the year 1866, in reference to the report rendered by the county judge? A. I cannot state positively the year; there were similar conversations since 1865.

Q. Has there been any action taken by the board upon those records since 1865, that you recollect? A. My impression is that—

Q. Have you been a member of the committee to examine into the accounts of the county judge? A No, sir.

Q. You don't know whether they ever made any investigation or not? A. I cannot state very positive.

Re-direct examination by Mr. E. H. PRINDLE:

Q. Do you recollect whether in this talk there was reference made

to the salary being but $1,000; in regard to the smallness of the salary? A. I think there was.

Q. What is the population of the county of Chenango? A. I believe it is something like 42,000.

Q. It has been 40,000 for a great many years? A. Yes, sir.

Q. It is large enough, so that the offices could have been divided by the board, if they had seen fit? A. Yes, sir.

Re-examination by Mr. STANTON:

Q. Mr. Shepardson, do you recollect the time when Judge Prindle was first elected to the office? A. I think it was in the fall of 1863.

Q. He was very anxious to get elected at that time? A. Yes, sir.

Q. Do you remember what the salary was at the time of the election in 1863? A. I am not certain.

Q. It was not as large as $1,000, was it? A. My impression is that it was; I don't know.

Q. Was the clerk hire as high in 1863? A. I can't state.

Q. It was not any larger than was fixed by the resolution of 1863; they did not reduce the salary or clerk hire? A. I think not.

Re-direct examination by Mr. E. H. PRINDLE:

Q. The price of every thing to live on advanced amazingly from the time he was elected, until 1866? A. I suppose so; they were much higher.

Mr. PECKHAM — Judge Prindle was not compelled to hold the office.

HENRY G. CROZIER, recalled on behalf of the respondent.

By Mr. E. H. PRINDLE:

Q. Mr. Crozier, were you a member of the board of supervisors in 1865 and 1866? A. Yes, sir.

Q. Have you heard the evidence of the last two witnesses? A. Yes, sir.

Q. State your recollection in regard to any talk or understanding among the supervisors, as to this report being received for those years from the county judge? A. The board of supervisors conceded that the salary of the county judge and the district attorney were too low; upon offering a resolution that the salary should be increased, we discovered that we could not increase the salary during the incumbency of the persons holding the offices mentioned; it was understood and talked of in the board that there should be some

allowance made to the county judge and district attorney for personal expenses, such as postage, stationery, etc.

Q. Do you recollect that during those years (1865 and 1866) coal was very high? A. I don't remember.

Q. Do you know there were two stoves kept running all the time in the surrogate's office? A. Yes, sir.

Q. Well, sir, was it understood that these reports were accepted in that way, with the view of making allowances?

Mr. PECKHAM — Now, I object to what he can swear to, as to what was understood; it is about time for us to understand how far they can go into this evidence by an understanding. If they can show any action by the board of supervisors, as a board, then well enough; but to bring in one witness after another, straggling along to show what was understood by one member or two members of the board, it seems to me is entirely improper.

Mr. E. H. PRINDLE—I thought the question had been passed upon.

Mr. PECKHAM—I don't think it was passed upon to that extent.

Mr. E. H. PRINDLE—All we desire is to have the simple fact understood.

Mr. PECKHAM—The difficulty is that you don't show that fact at all by asking what was understood; his witness can never swear there was an understanding, if there was an understanding, between two men, and yet the board itself never had any such understanding, and never took any such course at all.

Mr. E. H. PRINDLE—The trouble is that the counsel distinctly charged that there was fraud in this matter; we want to show that the whole thing was known to the board of supervisors, and that they simply allowed the report to be received in that way for these reasons.

Mr. PECKHAM—The trouble is, they don't show that the whole thing was known to the board; they simply show it was understood by a member or so of the board.

The PRESIDENT — Do I understand the counsel for the prosecution to object?

Mr. PECKHAM — Yes, sir; decidedly.

The PRESIDENT then put the question upon the objection.

Mr. E. H. PRINDLE — I don't understand that there is any question up, and I will allow the gentleman to cross-examine.

The PRESIDENT — The question is whether the objection shall be sustained.

Senator LEWIS — I voted to admit this class of evidence at first upon the theory that it was to be shown that there was this under-

standing between Judge Prindle and the members of the board of supervisors; if that is not to be supplied, I voted under a misapprehension.

Mr. E. H. PRINDLE — We propose to show that, but we could not show it by every witness.

The PRESIDENT again put the question upon the objection, and the objection was sustained.

Cross-examination by Mr. STANTON:

Q. Do you say there was a resolution offered in the board of supervisors to raise the salary of the county judge? A. Of the district attorney, with the view also of increasing the salary of the county judge; there was a resolution offered to increase the salary of the district attorney, with the view of increasing the county judge's salary.

Q. Was there any resolution to increase the salary of the county judge? A. No, sir.

Q. Was there any action taken by the board upon the question, whether he could be allowed certain expenses that he was not then allowed by the board? A. It was talked among the supervisors.

Q. Was there any action taken or resolution offered in the board? A. No, sir.

Q. Were you a member of the committee that investigated the accounts of the judge? A. I never was on that committee.

Q. Was there any resolution passed by the board indicating that they thought the salary of the county judge was too low? A. No resolution; no, sir.

Q. Can you tell by how many members of the board the expression was made that the salary of the county judge was too low? A. I cannot; it was generally talked among the members.

By Mr. E. H. PRINDLE:

Q. Did you say any thing to the county judge, do you recollect, in regard to the matter; did you and he have any talk about it? A. He complained of his salary being too low, so did the district attorney.

Q. And did he speak in regard to these accounts? A. Not that I remember.

By Senator D. P. WOOD:

Q. Was there any difficulty in the way of the supervisors making an allowance for the expenses of the office? A. Two parties in the

board were both anxious to increase the salary, but neither of them dared offer a resolution to increase the salary.

Q. Was that the reason why the salary was not increased? A. I presume it was.

Q. I understand you to say on your examination, that the reason was that the law was in the way? A. It was discovered that the law prevented increasing the salary during the term of office of the incumbent.

Q. Then which do you say was the reason that it was not done; that nobody dared offer a resolution, or that the law did not permit it? A. That the law did not permit it.

Q. Was there any law in the way of allowances being made by the board of supervisors for the expenses of the office; coal, fuel, or any other thing that these items, which you speak of, that were omitted from this account, were supposed to be an offset to? A. The board could not allow it even if they chose to do so.

Q. Was there any attempt made in the board to allow any thing for those expenses directly? A. I don't think there was; I don't remember.

Q. Can you give any reason why this thing was not done directly by the board, instead of indirectly? A. The law prohibited us from increasing the salary.

Q. I mean in allowances for expenses? A. I don't know the reason why it was not done; it seemed to be acquiesced in by the board; by the members.

Q. Was this matter talked in open board? A. Not in open board; no, sir; it was in the board-room when they were not in session.

Q. Then this understanding that you speak of was not an understanding derived from a conversation or discussion in open board? A. No, sir.

Q. But between different individuals? A. Yes, sir.

Q. How large a number to your knowledge participated in that discussion? A. I couldn't say.

Q. You couldn't say whether it was the majority or minority? A. I couldn't say.

By Senator PERRY:

Q. Mr. Crozier, did the county charge the judge any thing for rent of office? A. No, sir.

Q. Did the county furnish the judge with an office? A. Yes, sir.

Q. Without charge? A. Without charge.

Q. During all his term? A. Yes, sir.

By Mr. E. H. PRINDLE:

Q. He occupied a building owned by the county? A. For the county clerk and surrogate's office.

By Senator PERRY:

Q. Did the county furnish fuel? A. No, sir; nor lights, nor stationary.

Q. Furnished neither lights, nor coal, nor stationery? A. No, sir; not in 1865.

Q. Who did furnish them? A. The inhabitants.

Q. The county judge furnished it for himself? A. Yes, sir, and clerk.

By Mr. E. H. PRINDLE:

Q. The clerk for himself? A. Yes, sir.

By Mr. STANTON:

Q. Do you not recollect of bills being audited by your board in favor of the county judge for stationery? A. I do not.

Q. Not for any of his incidental expenses? A. I do not.

ISAAC PLUMB, a witness called on behalf of the respondent, having been duly sworn, testified as follows:

Examined by Mr. E. H. PRINDLE:

Q. Where do you reside? A. In the town of Sherburne.

Q. Are you one of the board of supervisors? A. I am.

Q. For how many years have you been a member of the board of supervisors? A. I first became a member in the year 1865; I have been a supervisor ever since.

Q. Do you recollect a conversation among the supervisors in regard to these estimated reports of the county judge for those years? A. Well, I remember there was conversation ensued among the members in regard to the judge's reports not being in full and itemized, and the understanding was that the judge had paid out certain sums in the office as a set-off to fees that he did not report.

Q. Did you have any conversation with the county judge yourself, in regard to it? A. I did; yes, sir.

Q. What was the substance of the conversation? A. Well, the substance of it was that the judge stated — explained that he had paid out money for various purposes — fuel, and I think lights of glass broken; and he had not made the return in full of fees, but had kept that as a set-off.

Q. Do you recollect the fact that prices had largely increased in every thing in 1865 and 1866? A. Yes, sir.

Cross-examination by Mr. STANTON:

Q. You say, Mr. Plumb, that it was distinctly understood by the board that Mr. Prindle had made a report of the full amount of fees that he received? A. I understood so.

Q. You did? A. Yes, sir.

Q. Was there any talk among the board of the probable amount he had failed to report? A. I have no recollection.

Q. Was there any talk about the amount of expenses he had been put to for fuel and stationery, such as you have mentioned? A. I have no recollection that there was any amount stated.

Q. Were you on the committee appointed to investigate the accounts of the county judge? A. In 1865–6?

Q. Yes. A. No, sir.

Q. Were you in 1867? A. Yes, sir.

Q. Did you make an examination of the county judge's books when you made your report in 1867? A. We did not; no, sir.

Q. Did you make any examination to test the accuracy of the report made by him? A. I think not; he made his report and we examined the report and got an explanation from him.

Q. You simply read the report? A. Yes, sir; with his explanation.

Q. What explanation did he give of his report made in 1867? A. Well, the explanation was that he had supplied the office with fuel and some other things, and retained fees sufficient to cover them.

Q. Which he had not reported? A. Which he had not reported.

Q. Now, sir, you, as a member of the board of supervisors assented to that as proper, and reported to the board that his report was correct, after that conversation? A. Yes, sir.

Q. How much did Judge Prindle say that he retained in his possession in the year 1867, of fees that he had not reported? A. I couldn't say.

Q. Can you tell whether he made any estimate or gave any indication of any sum? A. I don't remember as to that; it is very probable that he did; he satisfied me.

Q. Did he make any statement as to the amount of expenses that he had been to, that he thought he ought to be re-imbursed for? A. Yes, sir.

Q. Well, sir, what statement? A. The statement was that he had supplied the office with fuel.

Q. Did he give any estimate of the amount of those expenses that

he thought he ought to have? A. No, sir; not of the amount, that I recollect.

Q. Was your attention called to the affidavits that he made to the accounts that he rendered? A. Yes, sir.

Q. Was your attention called to the fact that he did not in those affidavits swear that he had not received any more fees? A. I have no recollection as to that; I have no recollection as to the wording of the affidavit.

Q. Was your attention called to any thing in reference to the affidavit itself? A. I don't know that it was.

Q. Was your attention called to the fact that the report was not itemized, as the law requires, by Judge Prindle, when he talked with you about it? A. I think it was; yes, sir.

Q. What excuse did he make as to that, if any; state what his language was? A. Well, he made no excuse, further than he had paid out these moneys for these purposes, and he had retained fees sufficient to cover them.

Q. And did not make any itemized statement? A. Well, I suppose that was the presumption.

Q. You were a member of this committee that investigated the affairs of the county judge last fall, were you not; the committee of investigation that went to the county judge's office, at his request, and investigated the affairs of his office? A. I was.

Q. You signed the report that was made and published as a campaign document, did you not? A. I did; excuse me if I explain; I did not intend it for a "campaign document."

Q. You intended it for publication, did you not? A. I was requested to go to Norwich for the purpose of looking over those accounts; I did so, and what was to be done with the report I had no notice about.

Q. Who was present at the time that investigation was made by you? A. Well, Mr. Mygatt and Mr. Glover were present, and Mr. Chase was present; Judge Prindle was present and Mr. Ray was present.

Q. Do you say that Mr. Glover was present? A. No, sir; I recall that.

Q. What investigation did you make before signing that report? A. We had the books present and we looked over the final accountings and examined the whole matter through with regard to the charges made on these final accountings.

Q. Who showed you the books? A. Mr. Ray produced the books; I don't know but what the judge brought in some; they were in an ante-room.

Q. Did he call your attention to the particular matters that he desired you to look at? A. There were charges preferred against the judge.

Q. How preferred? A. Preferred in the newspapers; we took up those charges as they were preferred *seriatim* right through, and passed upon them; those were the only ones that we felt called upon to pass upon.

Q. You knew there were other charges made against him in that convention? A. I did not; I was not present.

Mr. E. H. PRINDLE — There wasn't any, either.

Mr. STANTON — You can hardly state that intentionally; you must be sadly at fault.

Mr. E. H. PRINDLE — No specific charges.

Mr. STANTON — I can read them from the "Mill of Extortion."

Mr. E. H. PRINDLE — You have got charges in "The Mill of Extortion" I understand.

By Mr. STANTON:

Q. Were any of the parties present, at the time of that investigation, who claimed to have been injured by Judge Prindle in the way of charges or otherwise? A. Not that I know of.

Q. Do you know whether Mr. Isaac S. Newton was present at the time that was made? A. Mr. Newton was present; he was in the office, and it was proposed that we go in the ante-room and the books be produced there, and when I left the office Mr. Newton remained there, and when I came out he was gone.

Q. Did he take part in any investigation at the time you were there? A. He did not.

Q. Why did he not take part? A. I don't know.

Q. Wasn't it talked there among you, in the presence of Judge Prindle, that Newton was out in the other room; nothing said about that? A. There might have been; I have no recollection.

Q. In which room of the judge's office was this investigation made? A. In the room north.

Q. That is in the back room? A. Back room.

Q. Where was Mr. Newton when you saw him; in the front room? A. He was in the front room.

Q. Did you hear Mr. Newton say at that time that they ought to have an investigation where both sides should have an opportunity of being heard? A. I don't recollect Mr. Newton saying any thing of that kind.

Q. You don't know that that was the reason why, after he had been invited there by the county judge, he was left in the other room?

Mr. E. H. PRINDLE—I object to that question; it assumes that he had been invited there by the county judge.

Mr. STANTON—We will prove that fact.

Mr. E. H. PRINDLE—You had better wait until you prove it.

By Mr. STANTON:

Q. Who wrote that report? A. I think Mr. Ray copied the report as it was read off.

Q. Who read it off to Mr. Ray? A. Well, I don't recollect; Mr. Mygatt had the book looking it over, and Chase had the book looking it over; I don't remember.

Q. Who was it that framed the report, that is, that really drew it up and put the language in it that was used in it? A I think it was Mr. Ray, at the suggestion of the gentlemen present.

Q. Can you tell what that suggestion was? A. No, I cannot; after the report was drawn up, we looked it over, and were satisfied of its correctness and signed it; that is, I did.

Q. Then the report was framed by Mr. Ray, and you looked it over, and assented to it and signed it? A. I think Mr. Ray drew up the report; I think he did.

Q. How long were you in the office of the county judge making that investigation? A. I arrived in Norwich that afternoon, and we were there in the evening, and remained there; I was there until 1 o'clock the next morning; 1 o'clock the next morning I think; Mr. Mygatt was there until 12 o'clock; he had some business at home and had to leave; Mr. Chase was there until they got through.

Q. Do you mean 1 o'clock at night time, or the following day? A. One o'clock at night.

Q. This investigation was made mostly in the night time? A. Yes, sir.

Q. About what time did you go in the office of the county judge?

A. That was in the afternoon.

Q. Could you tell what time in the afternoon? A. No, sir; my memory don't serve me on that.

Q. Did you make your report wholly upon the papers that you

saw in the office, produced to you by Judge Prindle and Mr. Ray, or did you take also, in connection with those, the statements of Judge Prindle and Mr. Ray, yourself? A. We took them from the office.

Q. Didn't you rely in making that report upon the statements made by Mr. Ray, in reference to the facts of particular cases? A. I can't say that we relied altogether upon that.

Q. Did you rely somewhat on that in making that report? A. Perhaps we did; his producing the statements; the final accounting.

Q. Many of the charges relate to matters where there had been no final accounting? A. There was some; yes, sir.

Re-direct examination by Mr. E. H. PRINDLE:

Q. Did you see that report drawn up? A. I saw it and read it.

Q. Did you see the person do it when it was done? A. Yes, sir.

Q. Messrs. Mygatt and Chase were there sometime when you were not? A. Yes, sir.

Q. Counsel had spoken to you in relation to persons dissatisfied appearing before you; do you know that any person was dissatisfied except the defeated candidates in that convention, and some of their friends; do you know that any of these persons named in these charges were dissatisfied at all? A. Not one that I know of.

Q. Had you ever heard a word of dissatisfaction previous to that time? A. I never had.

By Mr. MYGATT:

Q. Do you not recollect the examination before the surrogate was principally had in the morning; do you not recollect I came in on the morning train and remained until one o'clock? A. I think it was before dinner time; I know I came in along about ten o'clock; I met you at the Eagle.

Q. I went with you from the Eagle? A. Yes, sir; my memory didn't serve me as to the time exactly.

Q. The examination was commenced about ten o'clock in the forenoon? A. Yes, sir.

Q. I left about one o'clock in the afternoon, not being there at night? A. You left at twelve o'clock at night; I stand corrected on that.

Q. At that examination, did we in the case of last charge examine the books, the applications to prove wills, of guardianship,

of letters testamentary, the entries in the office in regard to them and the vouchers? A. Yes, sir.

Q. Did you examine all those papers?

Mr. PECKHAM — I think you should not lead the witness.

The WITNESS — I have stated that; that we examined all the papers relating to those charges.

Q. You were a member of the board of supervisors last autumn? A. Yes, sir.

Q. You were present when the resolution was offered requiring Judge Prindle to produce before the board the petitions of proof of wills and letters of administration filed in his office during the four years last past? A. Yes, sir.

Q. I see you were present at that time, by the ayes and noes. A. Yes, sir.

Q. Did he, by his counsel, refuse; do the records show he refused to produce those books? A. Yes, sir; by advice of counsel.

Q. There is one fact that did not appear in the record; did his counsel then propose to go before the judge of the Supreme Court after they had refused to test the question as to his liability to produce those papers, and as to whether he would not be guilty of contempt for not producing them; I observe there was this resolution adopted: "The following resolution was moved: *Resolved*, That the chairman of the board be required not to present any question of contempt to the Supreme Court, without the express direction of this board to that effect. On motion of Mr. Plumb, the ayes and noes being ordered, the vote on the resolution resulted as follows: ayes, 11; noes, 9." Before the adoption of that resolution, had the counsel of Judge Prindle proposed to go before the judge of the Supreme Court to test that question; previous to the offering of that resolution or during that time? A. During that time, yes, sir; he expressed a wish so to do.

Q. Openly to the entire board to go before the judge to test that very question, instead of coming here or elsewhere; is that so? A. That is the way I understood it.

By Mr. E. H. PRINDLE:

Q. Is that the handwriting of Judge Prindle to that citation that I show you; you are familiar with his handwriting? A. I am, yes, sir; and should call that his signature.

Q. There would be no doubt about it? A. I think not.

Q. And the citation is in the handwriting of Mr. Ray? A. Yes, sir.

Q. Will you admit that is Mr. Stafford's handwriting there; Mr. Stafford has testified that paper was signed by Mr. Ray, and not by Judge Prindle; to say Stafford was entirely mistaken; it is Judge Prindle's handwriting beyond doubt.

Mr. STANTON — That is the Nancy Sherwood estate.

Mr. E. H. PRINDLE — That is the estate; there is no question about that; the evidence will show; do you admit that is the handwriting of Mr. Stafford?

Mr. STANTON — Yes, sir; signed as justice of the peace to that affidavit; it is hardly necessary to put that in evidence for that purpose; it incumbers the record.

Mr. E. H. PRINDLE — I desire a note taken, that the citation in the case of Nancy Sherwood was signed by Judge Prindle, and that the body of it is filled in by Mr. Ray, and the proof of service attached to it sworn to before Samuel T. Stafford, justice of the peace, the witness who was upon the stand, and who testified that Judge Prindle signed his name to it.

By Mr. STANTON:

Q. You were one of the members of the board last fall, that thought it wasn't proper to have any investigation into that matter of fees received by the county judge, were you not? A. No, sir.

Q. You were the one that signed the protest? A. I was.

Q. And at one time withdrew from the board? A. I did.

Q. You went back again afterward? A. I went back the next day.

Q. Were you present as a member of that board when this resolution was passed, referring this whole matter to this Senate? A. I was present in the room.

Q. Did you vote against it? A. I didn't; didn't vote at all.

Q. All of the members that had withdrawn previously had returned at the time of the passage of that resolution? A. I think they had.

Q. You claimed, as a member of the board, that the board of supervisors hadn't any authority to make any such investigation? A. I would like to explain that; it embraces this point; that the whole matter that we were to inquire into was his official conduct, and we didn't consider we had any jurisdiction over that part of it.

Q. Didn't you take the ground you hadn't any business to inves-

tigate any thing previous to his last term of office? A. We did, so far as that is concerned.

Q. While you were a member of that board you consulted frequently with Judge Prindle himself as to what was best to do? A. Not that I know of.

Q. Do you mean to say that you didn't consult with him as to what you had better do as a member of that board? A. No, sir.

Q. You had frequent interviews with him? A. The same as I did with Thompson, or any other gentleman in Norwich.

Q. Thompson was a very active friend of the judge's in this matter? A. I don't know that he was any more so than some others; I knew he was a friend of Judge Prindle's.

Q. He used his influence so far as he could to prevent any investigation, by the board, of these matters? A. To inquire into the conduct of the judge, but not as to the investigation of the accounts, that is, so far as we had any jurisdiction; we considered we couldn't go back of the reports of the previous years; we considered them as final reports he had made, that we couldn't go back of them.

Q. You are the member that offered the protest? A. I was.

Q. Who drew up the protest that you offered; who framed it? A. I did; I didn't draw it up.

Q. Who dictated it, or drew it up? A. Mr. Glover drew up the substance of it.

Q. He was one of the judge's counsel? A. He was; yes, sir.

Q. In the matter before the board? A. Yes, sir.

Q. These other members that signed the protest also had frequent conversations during the session of the board, with the judge's counsel, and with the judge? A. I don't know of their being in consultation, except at the time the protest was offered; the protest was gotten up; I have no recollection of any consultation previous to that.

Q. Don't you know that during the session of that board yourself and others of the party protesting against this investigation had frequent conversations and interviews with Judge Prindle and his counsel? A. Talked with him; certainly.

Mr. E. H. PRINDLE—I wish now to offer this petition to the board of supervisors that has been proved in evidence.

Mr. PECKHAM—What petition is that?

Mr. E. H. PRINDLE—The petition to the board of supervisors, signed by all the lawyers of Chenango county, and many other persons; all except Mr. Rexford; petition to have his salary increased to $4,000.

Senator D. P. Wood—What is the date of that?

Mr. E. H. Prindle—Oct. 10, '70; you recollect I inquired of some of the lawyers sworn if they had subsequently signed this petition; I desire to read it; Mr. Newton was the witness that proved it, and another.

Mr. Prindle read the petition to the Senate in the words following: (Marked exhibit 51.)

Exhibit No. 51.

To the Honorable the Board of Supervisors of the County of Chenango:

By the recent "act in relation to the county courts," the several boards of supervisors are conferred with power to establish the salary of the county judge.

By the same act jurisdiction is conferred upon the county court in civil actions to the amount of one thousand dollars.

In your county of Chenango, the county judge and surrogate are not elected as a separate officer. Acting as a county court, which is required to be "always open for the transaction of any business for which no notice is required to be given," the court has not only the enlarged jurisdiction of the recent act with the jury trial, but a vast amount of business is pressed upon this domestic tribunal, which has exclusive power to review the judgments of the justices' courts, and jurisdiction in mortgage foreclosures, and that to any amount, and also has jurisdiction in partition cases, and in dower, and in the sale of real property of infants and of persons of unsound mind. It can compel the specific performance of contracts, and has the care and custody of the person and estates of all lunatics and habitual drunkards in the county. It directs religious corporations as to the sale of their property, and has jurisdiction respecting ferries, fisheries, turnpike-roads, physicians, imprisoned, insolvent, absent, concealed or non-resident debtors, jail liberties, and on appeals from commissioners of highways. The large increase of railroads has conferred large powers with highly responsible and burdensome duties. In your county, which abounds in wealth and prosperity, with an increasing population and extensive commercial connections, the surrogate's court is always open for the probate of wills and the administration and adjustment of estates, for the accounting of testamentary trustees and guardians, the appointment of guardians for infants, the sale of real estate to pay debts, and for

many other matters relating to the disposition of property of deceased persons. The widow and the orphan look to the surrogate as the honest, independent and capable protector of their rights. With this load of public business, the faithful county judge ceases to be a practicing lawyer, and looks to the salary that you may grant, for his support.

By the recent act of the 27th of April last, the justices of the Supreme Court receive an annual compensation of $6,000 a year, with an additional *per diem* allowance of $5 per day, for their reasonable expenses in holding courts when absent from their homes.

The county judge is an incumbent of an office of labor and responsibility, frequently requiring capacity not inferior to a justice of the higher court. The intelligent electors of Chenango desire at all times to secure an impartial and enlightened administration of justice, and that the faithful judge receive a just reward for his labors.

As members of the bar of Chenango, and practicing in all the courts known to our Constitution, we respectfully ask you to fix that salary at an amount not less than $4,000 per year.

Dated *October* 10, 1870.

Henry R. Mygatt,
R. Macdonald,
Dwight H. Clarke,
Solomon Bundy,
O. H. Curtis,
Samuel S. Stafford,
Lester Chase,
Robert L. Brougham,
David L. Follett,
Horace Packer,
James W. Glover,
H. H. Harrington,
John Hyde,
W. F. Jenks,
H. M. Aylesworth,
C. B. Sumner,
O. F. Matterson,
Lewis Kingsley,
George H. Winsor,
W. S. Sayre,
H. A. Clerk,
Henry M. Tefft,
M. F. Ufford,
R. A. Stanton,
A. F. Gladding,
David H. Knapp,
E. H. Prindle,
Isaac S. Newton,
Geo. M. Tillson,
W. N. Mason,
Calvin L. Tefft,
H. Phelps,
Edwin A. Kingsley,
B. Gage Berry,
S. P. Allen,
J. F. Hubbard, Jr.,
J. S. Randall,
C. A. Fuller,
James E. Nickerson,
Walter A. Cook,
Demas Hubbard,
D. L. Atkyns,

G. H. Manning, James G. Thompson,
Geo. W. Marvin, D. M. Powers,
Geo. W. Ray.

Senator D. P. Wood — I would like to inquire with what view you put that in evidence?

Mr. E. H. Prindle — With this view, in particular, that certain lawyers, or one lawyer, has testified to something that he thought was wrong in a transaction occurring a year before this, and, also, with a view — all the lawyers who make these charges signed this petition — with a view of showing the standing of the county judge at the time that petition was signed with the bar of Chenango county, and other prominent men in the county that signed the petition.

Senator D. P. Wood — That was an application made before or after the election of the present incumbent?

Mr. E. H. Prindle — It was when he had a year or more to serve of the old term.

Senator D. P. Wood — But to take effect on the next term; could the allowance be made to take effect before the next election?

Mr. E. H. Prindle — Yes; I understand it would take effect then.

Senator D. P. Wood — It wasn't apparent at the time who the incumbent would be.

Mr. E. H. Prindle — It would affect this judge on his last year at all events; this judge had one year to run then.

Senator D. P. Wood — This was after the amendment to the Constitution?

Mr. E. H. Prindle — Yes, sir.

Horace G. Prindle, the respondent, having been duly sworn as a witness in his own behalf, testified as follows:

By Mr. E. H. Prindle:

Q. Are you the respondent? A. I am.

Q. At what time were you first elected? A. The fall of 1863.

Q. Your term of office commenced January 1, 1864? A. Yes, sir.

Q. When were you re-elected? A. Fall of 1867.

Q. And served a second term? A. Served a second term, and re-elected in the fall of 1871.

Q. Will you state what arrangement, if any at all, was made with Mr. Ray in regard to his being in the office? A. At the time he was admitted?

Q. Yes, sir. A. At the time he was admitted he talked about leaving the office, and I told him that he might stay there in the office, and his office-rent and expenses there would not cost him any thing; I thought he could do as well there as he could to go anywhere else; his familiarity with the business would be a great convenience to persons doing business there at the office; convenience to the public.

Q. Was any arrangement made between him and you by which he was to do clerical work in the surrogate's office? A. No arrangement whatever of that kind; nothing said about it.

Q. Was there ever any kind of partnership existing between you and Mr. Ray? A. Never.

Q. Any division of fees for his services or any thing of that kind? A. Not a cent; there would not be much to divide.

Q. You have heard the evidence in regard to Mrs. Hadlock? A. I have.

Q. I will ask you whether Mrs. Hadlock paid you any money upon that occasion? A. She never did; I did not know what she had paid until this trouble came up last fall.

Q. Will you state the occurrence in relation to your purchase of United States bonds of Mrs. Russell? A. Mrs. Russell came to my office to prove her husband's will; she was Mrs. Hook at that time, I understood; I had never seen her before; she came there for the purpose of having her husband's will proved; I drew the petition for the proof of the will; examined the witnesses; issued letters testamentary to her as executrix; after the letters were issued she stated that she had in the bank of Norwich three five-twenty bonds of $500 each, and wanted to get the money on them; there was a young gentleman with her; I understood it was her nephew at the time, but since, that he was her grandson; he, she stated, wanted to go west the next day, and she wanted to get the money on those bonds that day if she could; I told her that there was a premium on the bonds, and she could send to New York and have them sold and get the premium on them; but she wanted the money on them that day; I told her I had invested some money belonging to infants and other persons in government bonds, but I had never paid a premium on them, and that I would not do so; if gold went down to par then I would only get sixty cents on the bonds; these persons who were dealing in them could afford to pay premiums, but I could not do it; and she said that if she could sell them she would sell them for the face of the bond without the pre-

mium and the accrued interest; I told her I had not any money on hand at the time, but I thought I could find a person who had the money who would purchase the bonds; previous to this time I had a mortgage on a tannery that I sold to a man by the name of Ira Dibble, there in the village of Norwich; when the mortgage came due, I urged payment of the mortgage; I wanted to invest it in government bonds; he was not able to make the payment, and he agreed that if I would extend the time of the payment, if bonds were at a premium, he would pay me in these five-twenty bonds, paying the premium himself; and I thought of him at the time I made this remark; I went and found Mr. Dibble and told him there was an opportunity where he could get $1,500 of those bonds at par, if he could raise the money; he had not got the money himself and he said he would go to the bank and see if he could get the money; he went to the bank and they agreed to let him have the money if I would indorse the note; and I indorsed the note at the bank and he paid me the money; I went back and paid her the fifteen hundred and—well, whatever the face of the bonds and the accrued interest was; I think it was ten or fifteen dollars.

Q. And you took this assignment of—? A. Yes, sir; I asked her where the bonds were on the start; she said in the Bank of Norwich, and she exhibited this certificate of deposit that has been given in evidence; and after I purchased the bonds, I had her sign her name as executrix on the back of it.

Q. Did you go to the Bank of Norwich that day? A. I did not.

Q. Did you know what the premium was upon those bonds? A. I did not.

Q. You did your business at the Bank of Chenango? A. I did my business at the Bank of Chenango, where the bank does not do any of that kind of business; they don't buy any bonds; if a person wants to sell bonds, they will send them to New York and sell them; I didn't do any business at the other bank whatever; and I had no interest whatever in those bonds; Mr. Dibble was the only man really interested; he was to procure the bonds and pay them to me on this mortgage; he was to pay the premium.

By Senator D. P. Wood:

Q. He was to furnish the bonds to you at their face? A. Yes, sir; he was to furnish them to me at their face in consequence of the extension of time.

By Senator BENEDICT:

Q. And he did so? A. And he did so.

By Mr. E. H. PRINDLE:

Q. Was Mr. Dibble doing a heavy business in the tannery line there? A. He was; I sold him the tannery.

Q. About how long had that mortgage been due? A. I don't remember now: it had been due some time previous to that.

Q. Well it was a good while? A. Yes, sir.

Q. At what time of day did you file your decision on the judgment roll in the Smithville bonding case? A. I filed that decision between nine and ten o'clock.

Q. State what you did subsequently with the judgment roll? A. After the decision was filed they wanted I should draw a form of subscription to the capital stock for the commissioners to sign, as I had drawn one in the Greene railroad matter previously; I went and got the judgment roll from the clerk's office; took it up into my office and drew this form of subscription for the commissioners to subscribe to the capital stock of this Central Valley railroad.

Q. What time was it that you took it back? A. Probably between two and three o'clock.

Q. Who was in the office when you took it back? A. Mr. Follett, Mr. Thompson, they were signing these bonds; I think one or two of the commissioners.

Q. Did you know any thing whatever in regard to the preparation that the officers of the Smithville Railroad Company were making to get these bonds upon the market? A. I never knew any thing about it whatever; there never was a word said to me, in any way; the first I knew about it was about the time that we had this difficulty, last fall; I went to Mr. Newton, and he gave me the relation that he gave here in court; and the first that I ever knew that Mr. Rhodes had signed those coupons, previous to my filing my decision, was when he was called on the witness stand here.

Q. Do you recollect any thing about the conversation testified to by Mr. Birdsell, as occurring at the time this contest was going on in the court-house? A. In regard to the Greene railroad?

Q. Yes, sir. A. No conversation ever took place between Mr. Birdsell and myself, privately, in regard to the subject, whatever; there was talking and laughing among the counsel and the other spectators about this new law, and about compelling the county judge to have the hearing before him; and there was talk about the Legislature passing acts; if there were any more acts to be passed,

to increase the duties of the county judge, they thought they ought to be passed in view of the salary I received; some playful remarks of that kind.

Q. Was there any thing said except some jocose remarks? A. Nothing, whatever; nothing intimated by Mr. Birdsell or anybody else, that I was to receive any compensation in connection with it; I never thought of such a thing.

Q. Did you ever expect any thing? A. I never did.

Q. Did you ever receive any thing? A. I never received a farthing.

Q. Directly or indirectly? A. Directly or indirectly; in regard to the Smithville railroad, in the time of their appearing, I think three weeks previous to the time of filing my decision, they were coming to me; I had this surrogate business, county judge business, and some law practice to attend to, and I told them by a certain day — I presume I fixed on that day — by a certain day I would have the decision made; but I never intimated to any one connected with that railroad what my decision would be; there was a good deal of feeling between the Greene men and the Smithville men in regard to it; I told them I wanted to examine the question thoroughly, and write an opinion, because it would probably be appealed, and whichever way I decided, I wanted to give my reasons for it; when they came up that morning, I hadn't quite completed the opinion; they were there early in the morning, and after they came I completed my opinion; wrote, I think, half a page of it; here is the opinion that I wrote in the case (producing a paper). After I completed the opinion, I went to Mr. Follett's office, or I stated to them that I had agreed with Mr. Follett, after I had made the decision, before appointing the commissioners, that I would let him know what the decision was, so that in case it was against him, he could have an opportunity to appeal if he desired to, before I appointed the commissioners; I consequently went to Mr. Follett's office, and informed him of what my decision was in the matter.

By Mr. PECKHAM:

Q. What time of day was that? A. I think it was between nine and ten o'clock; I don't think it was later than nine o'clock; still, I won't be positive in regard to the hour.

By Senator D. P. WOOD:

Q. Before you filed the opinion? A. Before I filed the decision; before I filed any of the papers; I told Mr. Follett what I had done;

absolutely in his own right. That Carlos Cole, never having signed, nor authorized any person to sign his name to the articles of association, and not having subscribed for stock, he could not be named as one of the directors in the articles of association, and the organization of the company for that reason was void.

The counsel for the petitioners insist that the charter of a railroad company cannot be impeached collaterally, and that the regularity of the proceedings taken to organize this company cannot be questioned or determined in this proceeding, and that the certified copy of the articles of association duly filed and recorded in the office of the Secretary of State are conclusive, so far as this proceeding is concerned.

The law under which this application is made is a new statute, and but few adjudications have been made under it, and I am not aware of any case where this question has been decided, and I must, therefore, determine it from the intent of the statute, and from analogy.

In the case of *Robinson* v. *The Governors of the London Hospital*, 21 English Law and Equity Reports, 371, the question of the validity of the charter of incorporation was raised by the plaintiff, and the court laid down the rule that "a subsisting charter of incorporation is valid until it is impeached and disturbed, and the rights of parties under it are to be dealt with by the court, irrespective of what might be the result of future proceedings by the attorney-general or the crown to set it aside."

McFarlan v. *The Triton Insurance Company*, 4 Denio, 392, appears to be a case bearing somewhat on this question. This company commenced a suit against McFarlan on a bond executed by him to the company in the final sum of $7,000. The defendant pleaded, 1. *Non est factum;* 2. *Nul tiel* corporation; 3. Alleging irregularities in the organization of the company, and non-compliance with the act of the Legislature under which the company was incorporated. Judgment was given for the plaintiff, and the defendant appealed. BRONSON, Chief Justice, in delivering the opinion of the court, says, "it is unnecessary to inquire what may be the rights of the people in relation to this corporation, or as against the individuals who were concerned in getting up and setting it in motion. The defendant does not represent the sovereign power, and has nothing to do with the question whether the company should be dissolved. So long as the State does not interfere, the company may sue or do any other lawful act, whatever sins may have been committed in bringing the body into existence."

In *Eaton* v. *Aspinwall*, 19 N. Y. 119, the last case was cited with approval. The question in this case arose in regard to the incorporation of the Mexican Ocean Mail and Inland Company, the defendant having pleaded *nul tiel* corporation. The court held that the production of the certificate of incorporation which had been filed, and proof of user (if not of user alone) would have been sufficient, *prima facie*, to establish it a body corporate, in fact as well as in name, and when its corporate existence had been thus established, the defendant would not be permitted as a defense to show the facts alleged by him (which were that ten per cent of the capital named had not been paid in by him as required), "for the familiar reason that the right of a corporation to sue cannot be inquired into collaterally;" and the court further say, "thus it will be seen that this corporation, though not a valid corporation in point of law, may carry on its enterprises, have its day in court, and divide its revenue among the holders of the shares of its capital, until the State shall interpose and ask that it be dissolved, and that the only real necessity of complying with the statute in relation to the payment of the ten per cent was to prevent proceedings in behalf of the people to put an end to its corporate functions."

In the case of *The Buffalo and Pittsburgh Railroad Company* v. *Hatch*, 20 N. Y. 157, the question was raised in regard to the validity of the company's charter. Judge GROVER, in delivering the opinion of the court, says: "The corporation is formed by the filing and recording the articles of association and affidavit with the Secretary of State. In actions by or against the corporation, its corporate character is to be determined from those papers. In an action by the corporation, evidence that the length of the road in fact differs from that stated in the articles is not admissible to defeat the action, whether the difference arose from fraud or mistake. In a proceeding instituted by the public to dissolve the corporation, an inquiry into the true length of the road for the purpose of showing fraud would be competent."

The same principle appears to be recognized in *The Buffalo and Allegany Railroad Company* v. *Cary*, 26 N. Y. 75, although the defect in that case, if any, appeared on the face of the papers; the defendant claiming that the plaintiff's organization was defective, because the articles of association did not contain the allegation required by the statute, "that it is intended, in good faith, to construct, or to maintain or operate, the road mentioned in the articles of association." The majority of the court appear to have adopted

the opinion of Judge MASTEN, in the court below, wherein he says: "I am of the opinion that, under this and similar general acts for the formation of corporations, if the papers filed, by which the corporation is sought to be created, are colorable, but so defective that, in a proceeding on the part of the State against it, it would, for that reason, be dissolved, yet, by acts of user under such an organization, it becomes a corporation *de facto*, and no advantage can be taken of such defect in its constitution, collaterally, by any person. The State alone can take advantage of a defect in the constitution of a corporation like the one in this case."

I think the cases cited clearly establish the rule that the right of a corporation to sue cannot be inquired into collaterally, and in case of railroad corporations formed under the general law, where the articles of association and affidavit filed with the Secretary of State are fair upon their face, and show that the law has been complied with, it is conclusive evidence of its legal existence in any action by or against the corporation.

When a corporation is shown to have a legal existence, it has the same right to sue as an individual, and may be sued; and the court held in 20 N. Y., above cited, that its corporate character is to be determined from the articles of association and affidavit filed with the Secretary of State; and, although in an action instituted by the public to dissolve the corporation, evidence of fraud in its organization would be competent, such evidence was inadmissible in the action by the company. This distinction could not have been made upon any other theory than that the affidavit and articles of association were conclusive and could not be impeached in that action.

In 19 N. Y., the court held that it was only necessary to show *prima facie* the existence of the company, and this was done by the production of the certificate of incorporation and user, and that this evidence established it a body corporate in *fact* as well as in *name*, and the defendant was not permitted to disprove it; putting it squarely upon the ground, that the right of a corporation to sue cannot be inquired into collaterally; and the court held, that, although the corporation in point of law was invalid (unless the State interfered), it could still sue and conduct its business in the ordinary manner, and its existence could not be impeached, and holding still further, that the only *real necessity* of complying with the law, by paying the ten per cent of the capital, was to prevent proceedings in behalf of the people to put an end to its corporate functions.

The above case was cited with approval in 26 N. Y., above, and the court in that case went still further, holding that, although the papers filed, by which the corporation is sought to be ousted, are so defective that, in a proceeding on the part of the State against it, such defect would be fatal to its existence, yet if the papers were *colorable*, by acts of user, it became a corporation *de facto*, and no advantage could be taken of such defect in its constitution, collaterally, by any person, and that the State *alone* could take advantage of the defect.

The only remaining question upon this branch of the case is, are these authorities applicable to this case? This will require an examination of the statute under which these proceedings are adopted.

Chapter 907 of the Laws of 1869, section 1, authorizes a majority of the tax payers whose names appear upon the last preceding tax list or assessment roll of any municipal corporation to make application by petition to the county judge for authority to create and issue its bonds, to an amount not exceeding twenty per cent of its taxable property, and invest the same or the proceeds thereof "in the stock or bonds (as said petition may direct) of *such railroad company* in this State as may be named in said petition," etc. This section further provides that the county judge shall fix the day for the hearing and publishing motion, etc.

The second section provides: "It shall be the duty of the said judge, at the time and place named in the said notice, to proceed to take proof as to the said allegations in said petition; and if it shall appear satisfactory to him that the said petitioners, or the said petitioners and such other tax payers of said town as may then and there appear before him and express a desire to join as petitioners in said petition, do represent a majority of the tax payers of said municipal corporation, as shown by the last preceding tax list or assessment roll, and do represent a majority of the taxable property upon said list or roll, he shall so adjudge and determine the same to be entered of record. And said judgment and the record thereof shall have the same force and effect as other judgments and records in courts of record in this State."

All that is required in regard to the railroad company is, that it shall be in this State and be named in the petition. Now, conceding that there must be legal evidence of the existence of the railroad company named in the petition, was not the introduction of the certified copy of the articles of association, and affidavit filed in the office of the Secretary of State, sufficient and *conclusive* upon the contestants? I am unable to see how the contestants are in any

better situation to disprove and contradict the facts stated in the articles of association, than a defendant would be, sued by this same corporation. It cannot be possible that the Legislature intended to confer any such extraordinary power upon county judges in these proceedings as to try and determine the validity of all the railroad corporations in the State that seek the aid of towns in their construction. If the contestants had a right to show that one of the thirteen directors named in the articles of association did not sign, nor authorize any one to sign his name to such articles, they could show any other fact tending to show the invalidity of the incorporation, and thus try the whole question as fully as might be done in a direct proceeding by the people to dissolve the corporation. The Legislature never contemplated any such investigation in these proceedings. The second section of the article prescribes what the county judge is to determine. He is to determine whether the petitioners and those joining in the petition on the hearing do represent a majority of the tax payers and a majority of the property upon the assessment roll. It does not require him to determine the validity of the incorporation of the railroad company named in the petition.

The Central Valley Railroad Company was formed under the general law, in 2 Revised Statutes (5th ed.), 668; and from the language used in the first section it is not entirely clear that it is necessary that the first directors, to be named in the articles of association, shall be stockholders, owning stock absolutely in their own right.

The fifth section provides that there shall be a board of thirteen directors of every corporation formed under this act, to manage its affairs; and *said directors* shall be chosen annually by a majority of the votes of the stockholders, etc., and thus provides who shall be eligible as such directors, as follows: "No person shall be a director unless he shall be a stockholder, owning such stock absolutely in his own right, and qualified to vote for directors *at the election at which he shall be elected.*" I think this language and requisition were not intended to apply to the directors first named in the articles of association; and if I am correct in this, it was entirely immaterial whether Carlos Cole was "a stockholder, owning stock absolutely in his own right" or not, at the time the articles of association were filed.

The third section provides that a copy of the articles of association and the affidavit, duly certified by the Secretary of State, shall be presumptive evidence of the incorporation of such company, and of the facts therein stated.

The petitioners having presented a copy of the articles duly certified, and it appearing from such articles that the company was legally incorporated, it was conclusive upon the contestants, and the incorporation could not be impeached in this proceeding.

The next question that arises is in regard to the right of a petitioner to appear before the county judge upon the hearing, and withdraw his consent, and have his name stricken from the petition.

On this hearing, three of the persons who had signed the petition appeared and desired to have their names stricken from the petition, and to discontinue the proceedings, so far as they were concerned; this was objected to and the objection sustained. Although the objections were sustained upon the hearing, having the facts before me, if satisfied they had the right to withdraw their names, and the property they represent, they can be excluded in making up the judgment. *In the Matter of the Tax Payers of the Town of Greene*, 38 Howard's Practice Reports, 515, the same question was presented, and after a careful consideration of the law and authorities bearing upon the question, I held that when a person's name was fairly obtained to a petition to bond the town, he could not appear upon the hearing before the county judge and withdraw such consent, and have his name stricken from the petition. At that time, this conclusion, to my mind, was irresistible, and but for the very able argument of the Honorable Charles Mason, counsel for the contestants in this matter, I should have regarded the former adjudication of this question as conclusive. But divesting my mind as far as possible of former impressions, I have again carefully examined and considered it in all of its bearings as an original question, and am still unable to arrive at a different conclusion. The learned counsel conceded on the argument, that, under previous statutes for obtaining consents to bond towns, the party consenting could not revoke such consent, but claimed that under the present law there had been a radical change in this regard. Under either statute the town could not be bonded without the written consent of a majority of the tax payers appearing on the assessment roll designated. Under the former law, the consent was complete when the tax payer signed his name; yet with the name of every tax payer to the written consent to bond, the town was not bonded, and could not be, without the requisite proof being made of such consenting, etc. The fact that the law required some subsequent steps to be taken before the consents could become effectual, did not in the least affect the question of consenting. Under the law of 1869, under which these proceedings were adopted,

the town cannot be bonded without the written consent of a majority of the tax payers appearing upon the last preceding tax list or assessment roll. No one can consent in any other way than by signing the petition, either before the same is presented to the county judge, or upon the hearing before him. At what period in the proceedings to bond the town does the tax payer consent, and when is his consent binding upon him? There must be some time when his consent is complete, and nothing further is to be done, as far as giving consent is concerned. I think the moment he signs the petition he has consented to bond the town, and he cannot retract it; and when a majority have thus signed the petition, they have given their consent to bond the town just as effectually as when under previous statutes a majority of the tax payers had signed a written consent to bond. The only change made by the law of 1869, so far as this question is concerned, is in regard to the *method* of proving the fact, that a majority of the proper persons had consented in writing to issue the bonds of the town to aid in the enterprise. The fact that the petition is to be presented to the county judge, who is to take the proper proof of such signing, cannot affect the question of signing, nor render it less binding upon the persons thus consenting, than if such proof was to be taken in some other manner. The tax payers are not required to make the application to the county judge in person; the application is to be made by petition; there is nothing in the law that requires a single tax payer to appear before him. He consents to the bonding when he signs the petition, and simply asks the county judge to take the necessary proofs and proceedings to render what he and his associates had done effectual. The judge on the presentation of the petition is to publish a notice that on a certain day "he will proceed to take proof of the facts set forth in said petition, as to the number of tax payers joining in such petition, and as to the amount of taxable property represented by them." On the hearing the county judge is confined to the allegations *in the petition*, in taking the proofs. He is not to take evidence as to whether the petitioners, or any portion of them, have recanted or not, nor whether they still desire that the town issue its bonds to aid in the construction of the railroad. He is simply to determine whether the petitioners, and those uniting on the hearing, do constitute a majority of the tax payers representing a majority of the taxable property on the last preceding tax list or assessment roll; showing clearly to my mind that the law never contemplated any revocation of consents upon the part of the petitioners. Justice

Boardman, in the case in 38 How. Pr. Rep., before cited, was clearly of the same opinion. I understand that since that decision, the general term in the eighth district has made a similar decision, under this statute.

The third point presents the question, whether a person whose name appears upon the last preceding tax list or assessment roll as the owner of property, but who sells his property previous to signing the petition, can be considered as a tax payer within the meaning of the law of 1869. The Legislature having fixed upon the last preceding tax list or assessment roll as the basis, and confined the evidence on the hearing to the persons whose names appear thereon as the owners of property, for the purposes of this proceeding they must be regarded as the owners of the property. They are the tax payers referred to in the statute. This was my view of the question in the case in 38 How., and I do not see any reason for changing my opinion.

I also think that a person owning property in the town, whose name appears upon the assessment roll, may become a petitioner, although he is not a resident of the town.

It is claimed by the contestants that David Stiles, one of the petitioners, was improperly influenced to sign the petition. It appears from the evidence, that an application was made to him for his signature to the petition, when he hesitated about signing; it appeared that he owned two farms, one in the east part of the town of Smithville, and the other in the western portion, and he promised to sign the petition if Tarbell, who presented the petition, would find a purchaser for his farm, situated in the west part of the town; subsequently a purchaser was found, to whom he sold the farm by a written contract. Stiles then gave a written power of attorney to J. B. Lewis to sign his name to the petition, and Lewis subsequently signed the name of Stiles to the petition, pursuant to the above authority. I have failed to discover any fraud or undue influence used by any person to obtain the signature of Stiles to the petition. The sale of the farm appears to have been a *bona fide* transaction, and Stiles must be regarded as one of the petitioners.

I think, from the evidence, that William B. Cole authorized Hays to sign his name to the petition. It appears that he had sold his farm in the east part of the town, and, at the time the petition was being circulated, he lived near the proposed road, and was then in favor of the road. He is contradicted by witnesses Hays and Harri-

son, and the balance of proof shows that his name was signed to the petition by Hays, pursuant to his direction.

Three of the petitioners, James J. Harrison, William T. Smith and Spencer Hotchkiss, died after signing the petition, and before it was presented to the county judge, and it is now claimed by the contestants that their names should not be counted as petitioners.

There appears to be strong reasons in favor of the contestants' view of this question, although the mode of determining the question by petition may be regarded as a ready and convenient form of taking a popular vote; the tax payers signing are to be regarded as petitioners, and their petition must be presented to the county judge, and it is difficult to see how a person can be regarded as a petitioner when he is dead, or how he could be represented upon the hearing.

It may be regarded as somewhat similar to a case under the recent law allowing our soldiers to vote in the field, and send home their votes to be counted; if the soldier died after casting his ballot and before the day of election, his vote could not be counted; and I think the position taken by the contestants, that when a petitioner dies before the petition is presented to the judge, he ceases to exist, and therefore ceases to be a petitioner, and cannot be counted in making up the majority, is not without force: but the decision of this and the other questions raised upon the hearing are not very important (if I have taken the correct view of the other questions involved), as the petitioners, about whom there can be no serious question, do represent a clear majority of the tax payers and property on the tax list or assessment roll of 1869.

In regard to the propriety of bonding the town to aid in the construction of the proposed road I have nothing whatever to do; I have only to determine whether the petitioners constituted a majority of the tax payers, representing a majority of the taxable property on the assessment roll of 1869.

After carefully considering the evidence and the various propositions raised upon the hearing, I am satisfied that the petitioners do represent a majority of the tax payers of the town of Smithville, as appearing upon the last preceding tax list or assessment roll of said town, and that they also represent a majority of the taxable property upon such list or roll, and it is my duty to so adjudge and determine.

The WITNESS—I have furnished a copy several times in other bonding cases, where they have written to me for the opinion;

Judge Williams, in the case of the Valley road, was furnished a copy by Mr. Mygatt.

Q. Did I argue that question before you, or send an argument? A. I think you sent a written argument.

By Mr. E. H. PRINDLE:

Q. You have been attorney in some cases for and in some cases against executors? A. I have.

Q. Did it occur to you that there was any statute forbidding you to so act? A. I did not know there was any such statute until this trouble commenced; there have been but two or three instances where I have ever done it at all; I was employed in some cases before my election which I tried afterward, where executors and administrators were concerned; had I known of the statute, I most certainly should not have done it.

Q. Did Mr. John Murphy pay you fifty dollars at the time spoken of? A. He never did; never had any talk about paying fifty dollars; Mr. Mason has testified here in regard to my having Mr. Conkey send to New York some railroad bonds for me; I never had any conversation of the kind with Mr. Conkey in the presence of the witness who has been sworn (Mr. Mason); I sold the bonds directly to him, and I have Mr. Conkey's receipt here (producing the same); this is the receipt he gave me; he knew that I held these bonds in my possession, and he was desirous of raising money for the building of the Midland railroad, and we made a bargain by which he agreed to take the bonds and give me a certain amount of money and bonds of the Midland railroad, and this is the receipt that he gave me at the time.

Mr. E. H. PRINDLE—I desire to put that receipt in evidence, and I will read it.

The same was here marked Exhibit 53, and is as follows:

EXHIBIT No. 53.

NEW YORK AND OSWEGO MIDLAND RAILROAD,
TREASURER'S OFFICE,
NORWICH, N. Y., *November* 2, 1869.

Received of H. G. Prindle $10,700 in 5-20 U. S. Government bonds, and $100 in currency, for which consideration I do hereby agree to deliver to said Prindle $13,000 of the first mortgage bonds of the New York and Oswego Midland railroad on demand.

November 2, 1869.

WALTER M. CONKEY,
Treasurer.

{5 cent stamp.}

Cross-examination by Mr. STANTON:

Q. You have stated a conversation you had with George W. Ray at the time he was admitted to the bar; didn't you tell him in that conversation that you would like to help him and do all you could for him? A. I presume I did; I felt in that way.

Q. Didn't you tell him you would give him what business you could in your office, or something to that effect, if he would remain? A. I would not state positive; I don't recollect now.

Q. Mr. Ray has remained there from that time up to the first of January last, or a little subsequent thereto? A. When this trouble commenced, after the convention, and these charges were made, he was going to leave the office then; I told him he had better stay there till after election was over, and he was in and out of there, but did no business there after that time.

Q. You thought it would be for the interest of the public to have Ray remain in your office after he was admitted? A. Yes, sir.

Q. Did you have him go, on the first of January last, for the interest of the public? A. He refused to stay there longer in consequence of this trouble and difficulty, and I of course would not have had him remain there, because I wanted the public satisfied; as far as any complaints were concerned against the manner of the business being conducted in the office, I was willing to have it corrected as far as I could.

Q. You had him go, out of deference to the public sentiment? A. It was mainly that; it would have been a convenience, and when people come there now they complain about his being away, and I tell them that I have nobody there to draw papers and they must go to the lawyers and get the business done; I don't want to subject myself to any further complaint in regard to it.

Q. Since the first of January you have declined in various cases to do the necessary work or cause it to be done for the granting of letters? A. I have declined to draw petitions and this business that I consider it is the duty of a lawyer to do.

Q. In how many cases have you declined to do that since the first of January? A. I don't remember but two; I did not decline absolutely, but I stated the fact that we had a different order of things since election, and things were going to be done there so that nobody could complain.

Q. You declined to have your clerk draw the papers on the application of Wescott, didn't you, for letters of guardianship? A. I don't remember that I did.

Q. Didn't you decline to do the necessary work for the granting of letters of administration, on the estate of Morgan Mutnitt? A. I stated to him what I have already said.

Q. You referred Mutnitt to Mr. Ray, didn't you? A. I don't remember; Mr. Ray has been spoken of, in connection with this; I told him that Mr. Ray was in partnership with other parties, the firm name being Prindle, Knapp & Ray.

Q. You told Mr. Wescott he had better go to Mr. Ray to have it done? A. No, sir; I don't recollect it; you were associated with him, and I thought you were very competent to do the business.

Q. Did you decline on the application in the case of Seymour Martin? A. I stated to him that I had no one there to draw papers; that I was not going to have a lawyer there in my office, any more; I told him I would give him a blank, and would sit down at the table and tell him how to draw it; he finally took the blank, and went away and brought it back, and when he came back, and I told him there was a defect in it, he said he would go where it could be done right.

Q. Previous to this, your attention had been called to this statute, which says, "That such county officers shall in no case perform any official services, unless upon the prepayment of the fees," etc.? A. Oh, I understand it perfectly.

Q. You didn't construe that law, as making it the duty of the surrogate to draw these papers? A. As I construe the law, it is no part of the official duty of the surrogate to draw all the petitions for the granting of letters of administration, or guardianship papers, or the bond; the duty of the surrogate is purely judicial, and he is to sit and act as a judge of the county court.

Q. You say that you drew the papers for Mrs. Russell? A. Yes, sir.

Q. How much did you charge her for that business? A. I don't think she paid any thing, except for the stamps.

Q. Do you say she didn't pay you the sum of $12? A. I don't think she did.

Q. Do you say she did not? A. I would not swear positive, but I have no recollection of it, and no entry on my cash book.

Q. Do you say she did not? A. I say I don't think she did.

Q. Well, sir, can you swear positive? A. That is the best I can state; I don't think she paid any thing, except the stamps; I think the young man was sent out by me, and I told him how many stamps to get, and he went out and got them.

Q. Is that as strong as you can swear? A. I heard her swear she paid $12, but I have no entry of the kind, and my recollection is to the contrary.

Q. Can you swear any thing stronger than what you have already sworn? A. No, sir.

Q. Mr. Dibble gave you a note of $1,500, which you indorsed and put in the bank and drew the money upon? A. He went to the bank himself.

Q. With how much was Dibble credited upon his mortgage which he owed to you in consequence of that? A. He was credited with the amount of the payment.

Q. How much? A. Fifteen hundred and odd dollars.

Q. Do you mean to say he was credited with any more than $1,500? A. The note was over $1,500.

Q. How much over? A. I don't remember exactly; after taking out the discount on the note it was enough to pay what was going to Mrs. Hook.

Q. The amount you credited him was the amount of the note, less the discount? A. Yes, sir; that was all.

Q. Did Mr. Dibble ever have possession of the bonds that you obtained? A. No, sir.

Q. Did Mr. Dibble ever see them? A. I don't think he ever did; I know he did not, unless he saw them while in the bank, or after they were out of my possession.

Q. You heard the testimony of Mr. Newton and Mr. Latham, in regard to the disposition of the bonds in the bank? A. Yes, sir.

Q. Their testimony is correct about those bonds remaining in the bank subject to your order? A. Yes, sir; they are mistaken in regard to the time when this conversation took place.

Q. Did you purchase those bonds, at the time you purchased them of Mrs. Hook, for or on the account of any infants? A. No, sir; I expressly told her I hadn't any money; the only thing said about infants was, that I had previously invested in government bonds money in my hands belonging to infants, but never had paid the premium.

Q. You knew there was a premium upon the bonds at the time you purchased them of her? A. Yes, sir; I knew it.

Q. Did you know about how much premium there was? A. No, sir; I did not even look at the papers.

Q. You knew these bonds belonged to the estate of Benjamin Hook? A. I knew they did not; by the will she was given every thing; she stated to me the fact that they belonged to her.

Q. Belonged to her, how; under a will? A. Yes, sir.

Q. You knew they had belonged to the estate of Benjamin Hook? A. Yes, sir.

Q. Had there been any inventory of the estate returned to you at that time? A. No, sir.

Q. Did you know any thing about the amount of the indebtedness of the estate at that time? A. She said to me there was no debts.

Q. Where did you find Ira Dibble? A. At his house; he was eating dinner.

Q. Did you go directly to his house from your office? A. Yes, sir.

Q. How far is his house from your office? A. The place where he then lived was just back of Spaulding's; probably one hundred rods.

Q. You applied to Dibble, and he told you he hadn't any money? A. Yes, sir.

Q. What was said in respect to it? A. I said here was an opportunity to get $1,500 of those bonds if he could raise the money.

Q. Get them at what they were worth? A. Get them at the face of them.

Q. What further did you state to him; did you tell him he must raise the money if he hadn't got it? A. No, sir; I simply stated that there was the opportunity to get the bonds, and it was at his option to take them; money was very close at that time and good mortgages selling at from ten to fifteen per cent discount.

Q. When was this agreement made? A. About the time that the mortgage came due.

Q. How much did Mr. Dibble previously pay you in addition to the legal interest for the purpose of carrying that mortgage? A. Never a cent.

Q. How much had he given you in notes for the purpose of carrying that mortgage? A. Not a farthing.

Q. You say he had never given you a note for $600? A. No, sir; never.

Q. For the purpose of carrying that mortgage, in addition to the legal interest? A. No, sir, not at all; after this, when he wanted to have a settlement between us to ascertain the amount due upon the mortgage, then he gave me this $600 note, and this amount, paid for these Hook bonds, was deducted at the time in ascertaining the amount due and the premium; we looked through and found

out how much it was, and he gave me a note for the premium; I wanted the manner settled up; if he was not going to furnish the bonds I wanted the money or something to show for it.

Q. He gave you a note for the premium on the bonds? A. Yes, sir.

Q. How large a note was it? A. The note he gave was $600, and he paid something besides.

Q. That $600 note was to represent the amount of premium? A. No; that contained a portion of all our account; on that settlement there was a certificate; I was about to dispose of the mortgage at that time, and there was a certificate drawn upon the back of the bond at the time of that settlement, stating how much there was due upon the bond and the mortgage.

Q. About how long was it previous to this transaction with Mrs. Hook that this note of $600 was given to you by Mr. Dibble? A. Oh, it was afterward.

Q. It was aferward that the note was given, was it? A. Yes, sir.

Q. Explain a little more definitely what that $600 note was given for? A. I say it was given upon the settlement there at the time.

Q. For what consideration? A. I think when we figured up the matter there was from $800 to $1,000; there was over that amount of that note in premium.

Q. You figured up at the time of the settlement how much he would have to pay if he had purchased government bonds, and paid the full premium that they were worth in the market at the time that he purchased of you? A. We figured up at the time the amount due upon the mortgage.

Q. Under the agreement that he was to pay you in government bonds? A. In case he furnished the government bonds, of course had got to pay so much.

Q. This note was given for the amount that the premium would amount to upon government bonds, if he had purchased them at their full value in the market, wasn't it? A. Yes, sir; and in this settlement, this $1,500, whatever it was that was paid, was taken out.

Q. The $1,500, together with the amount of interest that had accrued upon the bonds, was figured in; that was all, was it? A. Whatever amount he paid, the amount of this note that he paid at that time, that was taken out.

Q. Less the discount, was it? A. Of course; the net.

Q. The net amount? A. Yes, sir.

Q. You say that Mrs. Hook signed her name upon this deposit ticket as executrix? A. Yes, sir.

Q. At your suggestion? A. Certainly.

Q. And you signed the receipt in the Bank of Norwich, which says that you received those bonds for and on account of the estate of Benjamin Hook? A. Well, I signed whatever receipt.

Q. The receipt has been given in evidence here? A. He raised some question over it, and wanted her receipt.

Q. You told Mrs. Hook there was no necessity of her going to the Bank of Norwich, didn't you? A. I did not.

Q. Did she suggest going to the Bank of Norwich in that interview? A. No, sir.

Q. She did not? A. She stated that she had the bonds in the Bank of Norwich; I told her I could take the certificate of deposit, and she could indorse it.

Q. When did you make the inquiry to ascertain whether the bonds were in that bank? A. Well, if I made the inquiry at all, I don't recollect it; my impression would be that I never had an interview with them at all until I went in there and they were transferred to me.

Q. Do you say positively that you had no such interview? A. Oh, I would not swear positively I had not; I might have gone in there and asked them about the bonds.

Q. And you can't tell when you went, if you went at all? A. Well, I can state with reference to this transaction, it was quite a long time after this transaction.

Q. You regarded those bonds as your own, did you not, when they were in the bank there, deposited to your name? A. I did.

Q. You did not regard Dibble as having any interest in them there? A. Not at all; Mr. Dibble had my receipt.

Q. Receipt for what sum? A. For this money.

Q. For the money that he had paid upon the note at the Bank of Chenango, wasn't it? A. I gave him a receipt stating, received of him so much, a note indorsed by me, to be indorsed on his mortgage when the note was paid, and it was subsequently paid.

Q. You had frequent interviews with the men interested in the bonding of the town of Smithville, between the time that the hearing was had and the time when you rendered your decision, did you not? A. Well, I don't know that I had any particular interview; I presume when they were up there they spoke to me about the decision to hurry it up.

Q. On one occasion, did you have an interview with Mr. Birdsell and Mr. Welch in reference to that transaction? A. I did.

Q. Did you tell them that they might notify Mr. Follett, the attorney employed in contesting the bonding of the town, that you would appoint a man as commissioner from the east end of Smithville? A. I do not think I ever did.

Q. Do you say that you did not, sir? A. Well, I haven't any idea that I did; I wouldn't swear positively in regard to it; I never had any talk with Mr. Follett about it, and I don't think I did with them; I can tell the conversation I had with them, if you want to hear it.

Q. Well, sir, I don't care for that; do you say that Mr. Follett told you that he did not intend to appeal the case of the bonding of the town of Smithville? A. I say that Mr. Follett said at that time — I can't give you his language — he satisfied me that he did not intend to appeal; I made this remark in reply: "If I had known you were not going to appeal, I shouldn't have taken so much pains to write the decision."

Q. When was that conversation? A. That was the time I went over that morning to notify him of my decision.

Q. Can you give his language in reference to appealing? A. I have just stated that I could not.

Q. You say he gave you to understand that he would not appeal? A. The language that he used upon that occasion induced this remark from me — caused me to make this remark.

Q. You knew that there was a very important legal question raised as to the organization of that company, did you? A. Well, they deemed it important and I examined it.

Q. Didn't you know, sir, that the counsel contesting the bonding had great confidence in that petition? A. Well, they appeared to have, and that's the reason why I went to notify him before I appointed the commissioners; if he had said he wanted to make an application to the court to carry up that case, I should have delayed the appointment of the commissioners; I told the gentlemen there at that time that I was going to notify him, and I think they said I hadn't better say any thing to him; I told them I had agreed to do it, and I should do it; there wasn't going to be any sharp practice, I told these Smithville men at the time.

Q. When did you have that conversation with the Smithville men? A. When they came there on that morning after I had finished the decision.

Q. Then they asked you to do something that you thought would

be a little sharp, did they? A. I think that Hays said something or expressed a desire not to notify Follett; I know I made the remark that I intended to have my action entirely fair; there was going to be no sharp game, or any sharp practice, so far as I was concerned.

Q. You say that talk was in the morning? A. That was at the time that I informed them that I was going to notify Follett of my decision.

Q. About what time in the day was that, sir? A. Well, I can't tell exactly.

Q. Well, the best of your judgment? A. I should think it was after nine o'clock.

Q. Well, sir, was it considerably after nine o'clock? A. That I could not say.

Q. How long was it after you had filed your decision? A. I had not filed that decision at that time; I had completed my opinion; at the time I went to notify Mr. Follett I had not filed the decision at all.

Q. When did you file that decision? A. My impression would be that I filed that decision about ten o'clock; that would be the best of my recollection.

Q. Will you swear that it was not until you notified Mr. Follett? A. I am certain.

Q. Can you recollect where you went to after you went to Follett's office? A. I went to my own office.

Q. Did you stop in the clerk's office? A. I might have stopped; I went right by the door.

Q. Did you have your decision with you when you went to Mr. Follett to notify him? A. I did not; that still remained in my own office.

Q. Was the appointment of the commissioners attached to that decision at the time? A. No, sir; I had not appointed them, and there had not any thing been said to me who they should be at the time I went to notify Mr. Follett.

Q. Was the appointment of the commissioners attached to the judgment roll when you first filed it? A. Yes, sir, I think it was; I think Mr. Hays, when he testified about that, was mistaken; the only purpose for which I went and got the judgment roll out of the office was to draw this formal subscription.

Q. Did you add any thing to the judgment roll after you filed it? A. No, sir.

Q. Have you any memorandum from which you can tell any more definitely the time that you filed that judgment roll, or is there any circumstance upon which you can fix the time? A. I can fix it this much; I can swear positively that I filed that roll before noon; if you want I should be positive, I took it to Mr. Merrifield, the deputy clerk, and he took and filed it at that time; now Mr. Follett states there was no filing on the back of that; that filing I know was on before Mr. Follett went in there; he filed it in my presence; this deputy clerk did, in the clerk's office, put this stamp on it; stamped it twice I think; of that there is no doubt.

Q. You do not mean to say that you had no conversation in the court-house with Mr. Birdsell, in reference to how you got pay for your services in that matter? A. Well, there was nothing said there except what was said publicly; they were laughing among the lawyers; of course I got no compensation.

Q. Did you have any conversation in the presence of Mr. Birdsell as to how you got pay for your services in the matter? A. Not at all.

Q. Then Mr. Birdsell has testified falsely in that respect? A. Well, I am not to judge of his, Mr. Birdsell's evidence; he may be mistaken about it.

Q. When was it, and where were you when you told these Smithville men when you would file your decision on that case? A. Well, I can't tell exactly where it was; I have no recollection about it; I remember telling them; they were urging me to make the decision by a certain time.

Q. Who was it you told that? A. I couldn't state that; I am inclined to think it was Mr. Hays.

Q. You can't tell where you were? A. I was in the village of Norwich.

Q. How many interviews altogether did you have with these men interested in the bonding of that town, in reference to your decision and the time you would file it? A. I never had but one.

Q. How many interviews did you have with these men during which the question was discussed as to who should be commissioners of the town? A. I never had any conversation except that morning.

Q. Never? A. Not that I recollect; I might have stated previously to that time what I had stated to the persons residing in the east part of the town; that they desired a commissioner there.

Q. Do you recollect the interview you had with Mr. Hays and others, in which you took down the petition or paper and showed

him the names of the man or men that they wanted appointed on the other side? A. I think that was that morning, before I went over to notify Follett.

Q. Are you positive about that? A. Well, that is my recollection.

Q. Is that as definitely as you can answer the question? A. Well, I haven't any doubt about it; I don't want to state positively with regard to any thing unless I have some memorandum to fix it.

Q. What was it that Mr. E. H. Prindle said to you at the table in reference to the proposed present from the Greene men in reference to the bonding of the Greene Railroad Company? A. He stated to me that Welch had been up for his bill and stated that they wanted to make a little present; I told him I should not have any thing to do with it.

Q. Did he tell you any thing about the amount of the bill that he proposed to charge? A. Not a word.

Q. Did you ask for your judgment as to the amount he had better charge, or ought to charge? A. Not a word.

Q. Have you detailed all the conversation that occurred between you and Mr. E. H. Prindle, in reference to that matter at that time? A. That is all I remember; I think if I had performed the services that he did in the matter, I should have charged them $2,500, and made them pay it.

Q. What services did Mr. Prindle perform in the matter? A. Well, he did all the work in it.

Q. What work? A. Well, there was the figuring in regard to the matter during the trial and all through.

Q. How long did the trial last? A. I don't remember.

Q. Can you tell about how many days? A. I should think it was about a week or ten days; it was a week certain; the opinion, I think, makes some allusion to it.

Q. What other services were there that were rendered in the case, besides the services upon the hearing? A. Oh, there was the making the brief in the case and the arguing it.

Q. How long an argument was there made in the case? A. I don't remember now.

Q. Was it argued in one day? A. Well, that might have been; I never heard any intimation about pay; that there was any talk about it until during this campaign; there were stories around that I got $3,000 and all sorts of things.

Q. I didn't ask you about that; who was it that first suggested the names of the commissioners in the Smithville case? A. Persons

that were then present; I appointed whoever they wanted in the east part of the town after they came back.

Q. You appointed whoever these men asked? A. I think they had a number of names there, and they were any of them good men; they determined among themselves on them; they might have spoken of Rhodes, and I said he was a good man for one of them; I wouldn't say about that.

Q. Did you hear any thing said in that interview by these men in reference to the bonds; did you hear the bonds mentioned? A. I don't think I did.

Q. Was there any talk in regard to whether the bonds had been gotten up? A. Not a word.

Q. Where did you first see those bonds? A. The first I saw of the bonds was when I went into the clerk's office to take back that judgment roll; then I saw what they were handling over.

Q. At the time you purchased these bonds of Mrs. Hook, had you any other government bonds? A. I had.

Q. How many others did you possess at that time? A. Well, I don't remember; I probably had these that I exchanged; those were the only government bonds I ever had in the world.

Q. Where did you purchase those other bonds, do you recollect? A. I do not; I think that the Bank of Chenango sent and got some of them; I got some of them at the National Bank in Oxford.

Q. Had you ever sold a bond previous to that time? A. I never had; I did not deal in them.

Q. Did you buy any after that? A. I did not.

Q. Do you recollect the case of *Coles* v. *Loomis*? A. I do.

A. In which you were engaged? A. I remember trying the case.

Q. You were attorney in the case? A. I think so.

Q. Was David W. Loomis an administrator of Vinson Loomis, deceased? A. I suppose so; I don't remember.

Q. The action was brought against him as such administrator, and you were the attorney? A. Action was brought for burning a barn by the father; I had been counsel for the father previous to that, and defended the father on an indictment successfully; I had been counsel for the father on the indictment; defended him on that indictment.

Q. The letters were issued in Chenango county? A. Certainly.

Q. You had jurisdiction over the accounts of that administrator as surrogate at the time? A. I presume perhaps I had, unless being counsel for them would prevent it, and probably would.

Q. Were you counsel in the case of *Guile* v. *Louck*; *Catharine Guile, executrix, etc.* v. *Louck*? A. Yes, I had notice of retainer; that was the last done about it.

Q. Mrs. Catharine Guile, the executrix, had letters issued to her in Chenango county? A. She had.

Q. You had jurisdiction over her accounts? A. I suppose I had.

Q. You tried as counsel the case of *Colton* v. *Randall*? A. I did.

Q. Tried it against the executor and summed up the cause against him? A. Yes, sir.

Q. You issued letters to him as surrogate? A. Yes, sir; the will was proven.

Q. Mr. Prindle, you kept "Dayton on Surrogates" all the while since you have been county judge? A. Yes, sir.

Q. Have you ever read it? A. I read portions of it.

Q. Have yon ever read the part defining the powers of surrogates? A. I presume so; I have no definite recollection of reading any part of it; it was a book like any other text-book in my office, and I had that; I read it as soon as the trouble commenced, whether it was there or somewhere else.

Q. Did you read this in that book, "no judge can practice or act as counsel or solicitor in which he was surrogate?" A. I perhaps read it when I was a student, but it never occurred to me when I was practicing in these cases.

Q. Did you read this, "that no partner or clerk in his office shall practice before him?" A. I don't remember I understood that.

Q. Did you ever read this part, "no judge, commissioner or other judicial officer shall demand or receive any fees or compensation for giving his advice in any matter or thing pending before such judge or officer, or which he has reason to believe will be brought out before him for decision?" A. Perhaps I did; I don't recollect.

Q. "Or for drafting or preparing any papers or other proceedings relating to any such matter or thing, except in those cases where fees are expressly given by law to such judge or officer for services performed by him;" have you ever read that law? A. I don't remember that I ever did; perhaps I did.

Q. Have you thought it was proper for you to draw papers to be used before you, as judge, and charge parties for drawing those papers and take the money for your own self? A. The thought never occurred to me, that I know of.

Q. You have done it in a good many instances? A. No, sir; I may have done it two or three times.

Q. Did you ever read the further law, "No surrogate shall be counsel, solicitor or attorney, for or against any executor, administrator, guardian or minor, in any civil action over whom or whose accounts he could have any jurisdiction by law?" A. I cannot swear about that.

Q. "In any civil action," etc.? A. I have no recollection about it; I can't say only the time these matters — services — were performed by me; I never thought of it and didn't know there was such a statute, and I don't think the judges before whom I practiced thought of such a thing; I know if Follett had thought of it at the time I acted in the Snow case, I have no doubt he would have objected to it; he didn't state the executor objected to it, that I understood.

Q. Did you think it was proper for a clerk of a judicial officer to practice before him as attorney and counselor at law? A. I knew the law prohibited it.

Q. Did you ever make any objections to Mr. Ray's practicing before you in that capacity? A. He has never practiced before me in that capacity.

Q. As attorney and counselor at law? A. You speak about the capacity of clerk.

Q. He has practiced before you frequently as an attorney and counselor at law? A. Certainly.

Q. Both in the surrogate's court and county court, and in the court of sessions? A. Since he was admitted he has; he was in no sense a clerk, as I regarded it.

Q. You have referred very frequently to this book since you have been in office? A. When I have had occasion to refer to it I have referred to it, I have no doubt.

Q. You knew about the law requiring an itemized report of your fees that you received? A. Yes, sir.

Q. Have known about it since you have been in office? A. I think so.

Q. You knew about the law which required you to pay over the amount of fees received by you after deducting the amount to the treasurer, semi-annually? A. I presume so.

Q. When you made your report of fees in the years, '65, '66, '67, did you know that you were violating the law in the manner in which you made that report? A. Well, I knew I didn't make the items of the amount of fees, of course.

Q. Did you know that you were violating the law when you made that report? A. Technically, perhaps, I did.

Q. Did you know, sir, that you were not reporting the full amount of fees that you had received during these years? A. I did.

Q. You did know it? A. Yes, sir.

Q. Did you leave that part out of your affidavit purposely, the part that — did you leave out any statement from your affidavit purposely, to the effect that you did not receive any more than you reported? A. I made that affidavit for the reason I had never kept a book of fees as mentioned in the law, and therefore could not swear that these were all the fees I had received.

Q. You left that out purposely because you could not swear that that sum you reported was all that you had received? A. Of course I had an object.

Q. What books? A. The letters of administration; of guardianship; the petitions for the proof of wills.

Q. You made your report less than the amount you had received, purposely? A. I made my report for the full amount I had received of fees, after deducting the expenses that I considered the county should pay, and I so explained it to the board at the time; the committee.

Q. Did you go to the board? A. Yes, with the exception of '64; I made an itemized report, and in '65, '66 and '67 I did not.

Q. What became of the money which you had collected as fees and failed to report in those years? A. When I received any fees, of course I spent it as I went along; had to live.

Q. Then you reported about what you thought the county ought to have? A. In the affidavit I drew, I wanted to draw one that I could swear to truthfully.

Q. You failed to report the full amount of fees you had received, then, purposely? A. I state the fact; I knew I hadn't reported the full amount of fees in those years.

Q. You have always kept, since you have been county judge, a memoranda of the cash received? A. I have not.

Q. Haven't you kept a memorandum book of the cash received and cash paid out, and been very particular about it, too? A. No, sir, I never have.

Q. Did you consult any memoranda or any data when you made those reports in '65, '66 and '67, to ascertain about the amount of fees that you had received? A. I did.

Q. What did you consult? A. I looked over the books; no, sir,

I reported; allowing the amount of fees, after deducting the expenses I was compelled to pay for fuel and other necessary expenses of holding surrogate's court, and conducting the office and the rest of it was reported; and I have examined the matter since to have a fair account, and as between the county and myself they owe me after paying the expense.

Q. How is that? A. I say upon a fair accounting between the county, after deducting the expense that I was compelled to pay, the county would owe me to-day, and of that I speak understandingly.

Q. Didn't you know what the resolution of the board of supervisors was in reference to expenses? A. I did.

Q. You knew the salary was fixed during the years 1865, 1866 and 1867, at $1,000, and $400 clerk hire, and that the $400 was to be in lieu of office hire and office expenses? A. I understood what the resolution was, of course; there was an office provided.

Q. You never hired any office at all? A. The first year I occupied an office awhile, my law office; they were repairing or fixing the surrogate's office, and after that I brought the records from Oxford to Norwich; I put them in the court-house, and occupied for that purpose the supervisors' room; I think toward the close of the year that I moved into the surrogate's office.

Q. Who has drawn the clerk hire appropriated by the board of supervisors since you have been in office? A. The only clerk hire fixed by the board of supervisors separate from the salary has been this last year.

Q. Separate from the salary? A. Yes, sir; there has been no salary of the clerk fixed until last fall.

Q. You have already said that you knew of the contents of the resolution of '63? A. Certainly.

Q. Who has drawn the money appropriated by the county of Chenango for clerk hire since you have been in office? A. I have drawn what was fixed by this resolution, myself, of the county, quarterly.

Q. You never paid any portion of that money to Thompson? A. I never did.

Q. How did you come to appoint him clerk for the purpose of certifying papers in your office? A. Because he was a very competent man, and then in the same building.

Q. Was he employed in your office at the time you so designated him? A. No, sir; constructively perhaps.

Q. Didn't you know the statute, which authorizes your appointment of clerk for the purpose of certifying papers, said "a clerk

employed in the surrogate's office?" A. I don't remember any thing about that now.

Q. You never looked at that statute to see? A. I perhaps looked at that statute, for it was under that statute, I think, I made the appointment.

Q. You knew at the time that Thompson wasn't employed in the office? A. Certainly; that he was there handy by, and been county clerk for a long time; a proper man to be appointed, I suppose, and I appointed him and he continued in that capacity until this last 1st of January, and I appointed a surrogate's clerk who was there and receives the salary himself; in '67 I reported the full amount of fees, and put in sums paid subsequent to the last report, and reported more than I received too, and put in my fuel and other expenses.

Q. You knew about the law of 1869, which required you to charge, for the use of the county, for the certified copies of papers given by you? A. I did; I knew of that law.

Q. You never kept a book of fees from the time you went into office? A. No, sir; never did, nor my predecessor.

Q. Did you make any report under the law of 1869 for the certified copies of papers? A. I didn't until last fall.

Q. At what time last fall? A. During the session of the board of supervisors.

Q. It was after you had served upon you the subpœna for appearance before the board for investigation of this matter? A. I don't remember.

Q. Then you reported how much? A. $25.

Q. Have you ever paid that to the county treasurer? A. No, sir; he has never paid me the quarterly salary; one is deducted from the other, of course; there has never been any payment of fees to the county treasurer at all.

Q. Have you ever kept any account of the certified copies of papers, and the number of folios each which you have given from your office? No, I swear positively that I have not received the sum of $25 since the passage of that act.

Q. Who has received the pay for certified copies mostly? A. Whenever lawyers wanted any copy of papers they made them themselves, and I signed the certificate.

Q. Haven't you had a great many copies made by Ray? A. I don't remember; he speaks of this one case; that is the only one that I remember that I ever had copied.

Q. Who has usually attended to that part of your business, the giving of certified copies during the time since the passage of this

act of '69? A. No particular person; when lawyers have brought papers there I have signed the papers, and they paid nothing for it.

Q. Don't you know that Ray has given a great many papers of that kind? A. No, sir; if he has, it has been without my knowledge.

Q. Have you ever paid any particular attention to that part of the business? A. No; I had all I could attend to without looking to matters of that kind; while you are speaking about my drawing papers, in regard to drawing the petition for appointment of commissioners, I stated to Mr. Tillotson, he came there in the first place and told me what he wanted, and wanted this question examined, whether a person owning land alongside of a proposed highway, where he was compelled to build a fence, and they did not take any of his land, whether he was entitled to have any damages appraised, and I told him he had better go to a lawyer and have him examine the question, and draw up the papers, and he urged me to do it, and wanted to know what it would cost, and I told him probably a lawyer would charge $10, and he urged me to do it, and I examined that question pretty thoroughly, and it is quite a question, as any lawyer knows who has examined it, and afterward drew his paper, and he came in and paid me $10; twelve shillings of that I paid to the clerk; the petition comprised nearly two sheets, with the description and all, and then the order that was drawn afterward was a lengthy order; it did not occur to me there was any thing improper in my examining that question; it did not occur to me about the suit, or that there was any impropriety in regard to it; if I had charged him $10 for what I did on the examination there, and charge for, he would not have paid any charge for it; there was nothing that I was to act upon afterward in regard to it, and the matter couldn't come before me in any way possibly.

By Mr. E. H. PRINDLE:

Q. Did you suggest to Mr. Birdsell my employment in the Greene railroad case? A. I did not; I never suggested to a person in my life to employ you in any case; nobody can charge me with that; Mr. E. H. Prindle came into the office while they were there, and some question came up in regard to the form of a notice, and he made some suggestion in regard to it.

Q. Did Mr. James G. Thompson do any work in your office? A. He came in there when he wanted to get copies of records; he may have assisted me occasionally; he was in there every day, more or less, until the time he was appointed clerk; I think he helped me there about matters.

Q. Granted letters and made certificates there? A. Yes, sir.

Q. That is all in the same building? A. Yes, sir; simply going up stairs.

By Senator LEWIS:

Q. Did he do any clerk business in the office; certified papers or any thing of that sort in your office? A. Certainly.

By Senator PERRY:

Q. The receipt of those bonds that you received from Mr. Conkling, does that bear date as of the time that you passed the bonds to him? A. Certainly; the time we made the arrangement.

Q. At the time you transferred the bonds to him he gave you that receipt? A. Yes, sir.

Q. That receipt bears date the same day, don't it? A. The same day; what they did with the bonds afterward I had nothing whatever to do with.

Q. How long after this was it before you received your bonds from him? A. I can't tell exactly; they were to be delivered on demand.

Q. Why were they not delivered at the time of the date of this receipt? A. He had to send to New York to get these railroad bonds.

Q. Midland bonds? A. Yes, sir.

Q. He didn't have them in his possession, did he, at that time? A. No, sir; they were in the hands of trustees.

Q. The receipt, then, was given to you at that time as a receipt that he would procure these bonds from New York and deliver them to you? A. Well, that was the understanding; we made this arrangement, swapping of the bonds, and he said he had got to send down there to get them.

Q. Your office is county judge and surrogate together? A. Yes, sir.

Q. What was the salary during your first term? A. It was $1,400 in all; a thousand dollars and whatever was given for clerk hire.

Q. What was it in the second term? A. One thousand six hundred dollars.

Q. What is it now? A. It has been fixed by the legislature at $3,000.

Q. Do you know what the population of the county was during your first term? A. Over 40,000.

Q. Do you know what it is now? A. It is over 40,000 now.

Q. Is it over 50,000, now? A. I should think it was under 50,000.

Mr. MYGATT — A witness has sworn that it was between 42,000 and 43,000.

By Senator PERRY:

Q. Do you recollect the testimony given by Mr. Newton, when he was recalled in relation to certain cases that were submitted to you for decision, as county judge? A. Yes, sir.

Q. Do you recollect of his testifying as to several cases, which were enumerated by him, as having been argued and submitted to you in the spring of 1868, and as not yet having been decided? A. Yes, sir; but there is no case of that kind, where the brief has been submitted on the other side; there has never been but one case, during my term, that has run a year after the briefs were submitted; I have probably a dozen cases undisposed of now; since this difficulty last fall, I have not had time to attend to any thing else, hardly; my recollection is, that there is one of those cases, where the proofs are in on both sides.

Q. You don't deny, then, but that the cases are both undecided? A. Oh, I presume the cases are not decided; some of the cases that he mentioned are decided, but I have not filed the decision.

Q. Now, judge, is it your excuse for neglecting to decide those cases within four years, that you have not received the briefs? A. Yes, sir; there is no case that has been four years; he is mistaken about that, I am certain.

Q. Did you say, then, that the cases that he testified to were submitted to you in 1868, and as not having been decide yet, are disposed of? A. No case remains undisposed of that has been submitted to me on both sides in 1868.

Q. Are there any that were submitted to you in 1869, that have not been disposed of? A. I think not; I think there are some cases that had been there six or eight months, when this campaign commenced last fall.

Q. Do you think there are cases that were submitted to you in 1869, that are not disposed of? A. I don't think there are.

Q. Are there any that were submitted to you in 1870 that are not disposed of? A. I don't remember but one; one of these that he mentioned; I think his brother testified here that judgment had been entered, and he paid it up.

By Mr. E. H. PRINDLE:

Q. Do you refer to the case of *Northrup* v. *Newton*? A. Yes, sir; that is one of the cases he mentioned here, and I decided it a long time ago; I think nearly a year ago or over, and judgment has been paid; Warren Newton swore to that here.

By Senator PERRY:

Q. The witness enumerated several cases that were submitted to you in 1868, and that are yet undecided by you; in reference to that I understand you to say he is not correct? A. There is no case that was argued as long ago as that, where the brief has been handed in to me on both sides; there were a number of these cases, especially where Mr. Follett is concerned, in which he has not filed a brief yet.

By Senator MADDEN:

Q. I would like to ask you whether the purchase of these bonds by Mr. Dibble, through you, and their re-transfer to you—whether those transactions took place the same day? A. It was all done the same day.

Q. You purchased these bonds of Mrs. Hook for Mr. Dibble? A. Well, I have stated what the facts were; he had the benefit, so far as any premium was concerned.

Q. Then he transferred those to you in payment upon the mortgage? A. Yes, sir.

Q. Was that done the same day that they were obtained from Mrs. Hook? A. Yes, sir.

By Senator ADAMS:

Q. Will you explain about that $600 operation afterward—what was the amount of the mortgage? A. There was between $8,000 and $9,000 due on it; I had had lumber of him and I had paid some money out for him and loaned him some money; we had a settlement, and whatever the bonds were worth at the time of that settlement was figured up and this $600 formed a portion of it, which was credited for this as so much paid on this mortgage.

Q. Was he credited with the premium? A. I didn't credit him with the premium, but deducted so much from the principal that was paid in this way at par; took $1,500 out of it and reckoned the premium on the balance.

By Senator D. P. WOOD:

Q. That is, you claimed that he had the benefit of the premium when you credited simply the face of the bond? A. Yes, sir.

By Senator LEWIS:

Q. He gave you the bond at par? A. Yes, sir.

By Senator PERRY:

Q. As I understand you, he was to give you the bonds at par in consideration of your extending the time of the payment of the mortgage? A. Yes, sir; that was the agreement.

By Senator D. P. WOOD:

Q. You stated that you recalled the judgment roll in the Smithville bonding case for the purpose of making out a subscription of the stock of the company? A. Yes, sir; drawing the form.

Q. Why was it necessary for you to have the judgment roll; how was that to assist you? A. Well, the judgment roll contained all the papers; the form that I drew in the Greene railroad case was a recital of the proceedings, and I drew a similar one in this case.

Q. What I want to get at is, what use the judgment roll was to you in drawing that? A. Well, simply to get the dates; the date of the petition and all that; there was a general recital in the subscription, I think; that was the only object.

Q. These government bonds that have been spoken of that came from Mrs. Hook; when was that certificate, which she assigned to you, surrendered to the bank, and they transferred to you the bonds; was it on the same day that you obtained it from her? A. Oh, no; it was months afterward; I carried it in my pocket.

Q. One of the witnesses spoke of your having gone into the bank and making some inquiry about the bonds; were you ever in the bank making any inquiry about those bonds; were you ever in the bank making any inquiry about those bonds at any other time than at the time you had that certificate? A. I have no distinct recollection that I was; I will swear positively that I didn't go into that bank in three weeks from the time I purchased those bonds.

Q. You will swear, then, that if you were in there at all it was after you had purchased them? A. Certainly, that I am positive of.

Q. These returns of yours to the board of supervisors, that are claimed to be defective, in which you claim to have set off a part of your receipts, that you didn't return, against the expenses of the office; did the returns for those years contain any charges for the expenses of the office against the county? A. None whatever, except in 1867; then I put it in; Mr. Plumb was mistaken when he stated in regard to what was said; what I stated to Mr. Plumb was, that the year previous I had kept back fees enough out of the report

to pay these expenses, and that that year I had reported the full amount and more too, and put in my expenses.

Q. In 1867, what items of expenses did you charge against the county in your bill? A. Well, I charged for fuel, postage, etc.; I couldn't remember now.

Q. Is that one of the years in which you made these defective returns? A. Well, I made that return all along; credited so much gross for the amount of fees received; but then I looked over carefully the report of the fees and reported some that had been paid previously; so that I reported more fees that year than I had received.

Q. You made your report in gross that year? A. I did.

Q. And you charged these expenses of the office against the county? A. Yes, sir.

Q. And you say that although that account was made out in gross you actually reported more than you had received? A. I did, for I have examined it since.

By Mr. STANTON:

Q. Have you a copy of that report for 1867 with you? A. I have.

Q. A correct copy? A. Yes, sir.

Q. Will you produce it? A. I will (producing paper).

Q. Is this the original report? A. No, sir; a copy.

Q. You say that year you returned more fees than you actually received? A. I did.

Q. Did you make the affidavit that is attached here? A. I did make the same affidavit that I did in regard to the others.

Mr. STANTON — I introduce this in evidence.

The paper was marked Exhibit 54, and read by Mr. Stanton, as follows:

EXHIBIT No. 54.

COUNTY OF CHENANGO, IN ACCOUNT WITH H. G. PRINDLE, COUNTY JUDGE.

1867.	*Dr.*	
To salary, etc., one year		$1,400 00
To fuel, postage, etc.		185 00
		$1,585 00

Cr.

By fees, etc., received	$285 00
By cash of county treasurer	1,250 00
	$1,535 00
Balance due H. G. Prindle	$50 00

CHENANGO COUNTY, *ss.:*

H. G. Prindle, being duly sworn, says he has received the fees stated in the foregoing account; that the items for services and disbursements therein charged are as stated therein, and no part of the same has been paid except as therein stated.

H. G. PRINDLE.

Sworn before me, this 18th day of November, 1867,

EDGAR GARRETT,
Justice of the Peace.

Indorsed: County Judge Report, 1867. (Copy.)

Mr. MYGATT—We may desire to call the executive as a witness, unless opposing counsel will admit that the Governor would testify that there were no papers before him when he sent this proceeding to the Senate, except those that appeared in the papers that were sent to the Senate; that he examined no witnesses, took no testimony or any proceeding except as appears in his report to the Senate, in the documents accompanying his message.

Mr. STANTON — If the counsel for the respondent will state the facts as they occurred, or admit what we ask them to admit, and I will state now what that is, we will consent to do as he requests. The point which we want is this: That Judge Prindle was notified and appeared before the Governor, upon his own request or the request of the counsel, Mr. Mygatt, who had previously written a letter to the Governor, asking that Judge Prindle have an opportunity to be heard in case charges were preferred against him—

Mr. MYGATT — But no evidence being offered at all.

Mr. STANTON — That, in accordance with that request, the Governer notified Mr. Mygatt, as counsel, and the day was fixed upon; and upon that day, the respondent, with his counsel, appeared before the Governor; that at the commencement of the proceedings Mr. Mygatt inquired of the Governor how he would proceed in the matter; whether he would hear the oral evidence of witnesses or examine

such documentary evidence as should be produced; that the Governor replied: "You wish to appear; you have had notice, and I am ready to hear any thing that you have to produce in this matter without dictating what you should produce;" and that the counsel did produce before the Governor whatever he saw fit; that the respondent himself was heard personally and by counsel, and that all papers that he saw fit to present upon that occasion were presented to the Governor, and, so far as presented, acted upon by him. If the counsel will make an admission of that statement in connection with his own —

Mr. MYGATT —All of which were included in the papers sent to the Senate; there were no witnesses examined.

Mr. STANTON — There were no witnesses examined, but I wish to have it appear that the respondent had opportunity to offer oral evidence if he desired to.

Mr. MYGATT —I don't recollect about the oral evidence; but we concede that to be so.

Senator PERRY—As our time is quite short it might be advisable, if the counsel wish, to call the executive, who, I have ascertained, is down stairs.

Senator BOWEN — Mr. President: There are quite a number of senators who must go away very soon, and there is some executive business to be done; while we are in executive session, which will be very brief, counsel can agree.

Senator WOODIN — Is there any further evidence to be offered on the other side?

Senator BOWEN — Let the counsel go out and agree while we are in executive session.

Senator BENEDICT — Is there any other evidence to be produced?

Mr. STANTON —We are unable to say, until we know what course the respondent is going to pursue in that regard.

Mr. E. H. PRINDLE —We have no further evidence to offer.

Mr. MYGATT — The whole evidence is closed, except this statement.

Senator D. P. WOOD — As it is desirable to have the executive session before half-past twelve o'clock, and that session will not occupy but a few moments, probably, with the view of saving time, I move that the Senate now go into executive session. The counsel can talk the matter over among themselves, and be able when we come in to inform us just what they want.

Mr. MYGATT —Is the evidence closed upon both sides?

Senator D. P. WOOD —That is to be considered when we come in.

The Senate, at 12:25 P. M., went into executive session, and resumed the case at 12:45 P. M.

Mr. MYGATT — The proposition as to the Governor's testimony, I think we have agreed upon; you may state Mr. Stanton, how you desire it.

Mr. STANTON — If you admit that the statement I made in reference to the proceedings before the Governor were there had, and correct, we admit upon our part that no witnesses were sworn before the Governor, and no further affidavits presented to him than the ones which were transmitted under the charges.

Mr. MYGATT — And the same ones which were transmitted with the charges?

Mr. STANTON — Yes, sir; that they were the same.

Mr. MYGATT — That the Governor had before him the same evidence he transmitted to the Senate and no other evidence, but that the Governor allowed us, if you please, to introduce evidence.

Senator PERRY — Is that all?

Mr. MYGATT — That is all upon that branch; I observe upon looking at the printed record at page 362, that there is a mistake in the evidence of Isaac S. Newton; it is not a very important mistake, but still it had better be corrected; in speaking of these bonds for the town of Greene, the witness says, "Mr. Mygatt went to New York and printed the bonds;" it should read Mr. Hays went to New York and procured the bonds to be printed; I do not want to be connected with this transaction, as I had nothing to do with the bonds; it puts me in an improper position.

Senator WOODIN — Is the testimony closed on both sides?

Mr. MYGATT — Yes, sir.

Senator BENEDICT — Mr. President: I move that the hearing of the counsel in this case and the decision thereof be postponed to the seventeenth of September.

Mr. E. H. PEINDLE — If it would be in order I would say that, on behalf of the respondent, I make the offer to submit the case without argument.

Mr. MYGATT — We are willing to submit without argument.

Mr. PECKHAM — We desire to call the attention of the Senate to some portions of this evidence which we regard as important and very pertinent to the issue.

Senator PERRY — I would amend the motion of the senator from the fifth (Mr. Benedict), by making it the second Tuesday of September, which is the tenth.

Senator JAMES WOOD—I would inquire of senators whether they expect to take up the case of Judge Curtis before that?

Senator BENEDICT — No, sir; at that time; I was going to make that motion; I wanted to say one word in regard to this day; it is impossible to say how long we shall be occupied at Saratoga; there are eminent counsel employed, and it may possibly be a very technical trial all the way through, and interlocutory arguments, and Saratoga is a hard place to sit all day, and we may be there until the first of September; then we want a little time before we come here again to have a long session and dispose of Judge Curtis; I only want to put it so far forward that we shall be sure and be here.

Senator PERRY — My object in changing the time to the second Tuesday in September is probably that we can finish up that week, and if we wait until the seventeenth, we may be detained until within a week of election.

Senator BENEDICT — I would add "at ten o'clock in the morning."

The motion was then adopted.

Senator BENEDICT — Now, then, the question upon the resolution as amended.

Senator D. P. WOOD — I understand this is a resolution fixing the time for closing this case?

The PRESIDENT — Yes, sir.

The PRESIDENT then put the question upon the resolution as amended, and the same was carried.

Senator D. P. WOOD — I move that the Curtis case be set down for trial immediately after the disposition of the Prindle case, to wit, on the 11th of September, and that the respondent and prosecuting counsel be notified by the Clerk.

The PRESIDENT put the question upon the motion of Senator D. P. Wood, and the same was carried.

Senator ALLEN — I move that the Clerk of the Senate be directed to furnish to each of the senators all the evidence taken in this case; various members of the Senate have been absent during some portion of the time of the taking of testimony in this case, and the Clerk should be directed so to do, in order that senators may have an opportunity of reviewing the evidence.

Senator PERRY — I would amend by adding, "to the counsel for the prosecution, the respondent and his counsel."

Senator ALLEN accepted the amendment.

The PRESIDENT put the question upon the motion of the senator from the thirty-second (Senator Allen), which was carried.

Senator PERRY — I move the Senate do now adjourn.

The motion being carried, the PRESIDENT declared the Senate to stand adjourned until the 10th day of September, 1872, at 1 o'clock P. M.

IN SENATE, ALBANY, N. Y., *September* 10, 1872 — 10 A. M.

The Senate met at 10 A. M.

The CLERK called the roll, and there being no quorum present, the Senate was declared adjourned until 4 P. M.

Senate met at 4 P. M., pursuant to adjournment.

The CLERK called the roll and announced the presence of twenty senators.

Senator WINSLOW — Mr. President: I move that the Senate go into secret session for consultation.

The PRESIDENT submitted the question to the Senate, on Senator Winslow's motion, and it was decided in the affirmative.

Upon the re-opening of the doors, the PRESIDENT made the following announcement: "The Chair, in accordance with the rules heretofore adopted, states and announces that when the Senate adjourn this day, it will be to the 20th day of November next, at 10 o'clock, and that the Senate, in private session, have adopted a resolution of that character."

Senator D. P. WOOD — Mr. President: I move that at the time fixed for the re-assembling of the Senate, the Prindle case be disposed of and the Curtis case be taken up immediately after the disposition of the Prindle case, and tried and disposed of.

Senator JOHNSON — Mr. President: I rise to a point of order; the Senate, by a vote of its body, passed a resolution to adjourn until the 20th of November next. That resolution was put and carried; the Senate therefore stands adjourned, and it is not competent to make any motion.

Senator D. P. WOOD — Mr. President: I understand that the business transacted in secret session was to determine at what time this Senate would adjourn; that in coming out of secret session the judgment announced, as is usual, and as under the rule, as the record of the action taken in the secret session, that when this Senate adjourn it be to the 20th of November, at 10 o'clock, A. M.; and it is fair to the parties engaged in the trial of these cases that it should be understood in what order they are to be taken up, and they are then to be taken up and disposed of. I suppose the senator from the twenty-

sixth does not object to the parties knowing the order in which the cases are to be disposed of?

Senator JOHNSON — I ask the ruling of the Chair.

Senator MADDEN — Mr. President: I was not aware that the Senate was adjourned finally in secret session. We simply decided that when we adjourn we adjourn to that time, then we come into open session, and any business may be taken up.

Senator JOHNSON — Mr. President: When I asked the question for a division of that vote, it was announced by the Chair that the division was not in order during the pendency of that vote, and that it would not be in order after the vote had been submitted.

Senator PALMER — Mr. President: I call the senator to order; he is speaking about subjects that transpired and were debated in secret session. I call the senator to order.

The PRESIDENT — The senator from the eleventh, who raises the point of order, will please state what rule the Senate adopted which forbids the disclosure of any thing that transpired in secret session.

Senator PALMER — I cannot refer to any rule now, but I suppose it is a general rule of parliamentary bodies, generally understood to be so at least — I cannot refer to any now — that all subjects discussed in secret session shall not be referred to in open session.

The PRESIDENT — The Chair is not aware of any rule that would prevent the senator from the twenty-sixth referring to any matters that took place in secret session, if he so desired; if there is any rule of that kind the Chair will readily enforce it.

Senator JOHNSON — The Senate will see that I was making no exposition; it was only in regard to the question that was before the Senate, and whether, as I before stated, that a division of the question was not proper during the pendency of the question; and after the question had been put, then it certainly would not be in order, because the Senate would have adjourned.

Senator WINSLOW — Will the senator give away?

Senator JOHNSON — Certainly.

Senator WINSLOW — Mr. President: I would like to remind the senator that the motion on which he asked a division of the question was put and decided lost by a vote of the Senate.

Senator JOHNSON — Mr. President: I wish to remind the senator from the eighteenth that he is mistaken; that it never was put and lost, for the reason the Chair put it out of order.

Senator J. WOODS — No; the question was pending when you asked that.

Senator JOHNSON — Certainly it was, I conceded that, and when

it was put an amendment was made changing only the date, and which was put and carried, and when that was carried the Chair announced this Senate stood adjourned until the 20th of November next.

Senator J. Woods — Then it was a premature announcement.

Senator Johnson — The motion was that the Senate adjourn at that time, and I ask the ruling of the Chair upon that point of order.

Senator D. P. Wood — Mr. President: I may have made a mistake in putting my motion, but I intended and supposed I made that motion, that when the Senate adjourn it adjourn to that date.

The President — The rule of the Senate seems to be imperative, that whatever is done in private or secret session shall be announced at the conclusion as the result of their action, not what was done; but the Clerk reminds me, very properly, that the result of our action in secret session shall be announced when the Senate comes to open its doors and act in open session. The Chair will construe the resolution of the senator from the eighteenth to have been put in accordance with that rule; and the Chair, in deciding the motion to adjourn in secret session, without making that announcement, was contrary to the rules adopted by the Senate; it was premature.

Senator Johnson — I was going to say, in regard to that, the President of the Senate, in accordance with a resolution adopted by the Senate, having declared the Senate adjourned, is there any power in the Chair to allege that was a mistake, and reorganize that body?

Senator D. P. Wood — Mr. President: I rise to a question of order, that there is no question before the Senate except the motion made by myself, and there appears to be no discussion going on upon that motion. The senator from the twenty-sixth raised the point of order. The Chair decided the Senate was adjourned. The Chair recalls that decision almost immediately after, and now recalls it and before any separation of the Senate, and will treat the motion of the senator from the twenty-second as being in order. I understand the Chair has decided the point of order not well taken?

The President — The Chair has so decided.

Senator D. P. Wood — Then the only question before the Senate is the motion made by myself.

The President — That is the only question before the Senate. The question is on the motion of the senator from the twenty-sixth; the motion is, that on the 20th of November, the case of Judge Prindle be taken up at ten A. M., and immediately after its conclu-

sion the case of Judge Curtis be proceeded with. The question is on that motion. Is the Senate ready for the question?

Senator PALMER — I will suggest to the senator from the twenty-sixth the propriety of adding to that motion of notifying the witnesses in the Curtis case they need not be present to-morrow.

Senator D. P. WOOD — I have no objection to accepting that as an amendment; I suppose that would follow of course; the Clerk of the Senate is instructed to notify all the parties interested in these cases of the adjournment until that hour.

The PRESIDENT — The motion is, that on the 20th of November next the Senate proceed to the consideration of the trial of Judge Prindle; immediately at its conclusion, that the case of Judge Curtis be proceeded with, and that the Clerk of the Senate be instructed to notify all parties interested in these respective cases that these trials are postponed until that time and will then proceed.

Senator JOHNSON — Mr. President: The difficulty, it seems now, under which the Senate is laboring, the ability to meet and dispose of this question now, is the pressing importance of a political campaign, which is now being opened with so much spirit by the two great political parties; that the pressure upon the time of the individual senators is so great that they have not the time to give to the public; to give to their duties as senators; to give to the people of this State; to give to the people of Chenango county; to give to the judge who is accused before this body, time to hear that case, and determine whether this imputation under which he is resting — this brand that has been placed upon his forehead — is to be removed, or whether he is to be acquitted, and no longer rest under this imputation, owing to the pressure of political business, and, as has been suggested, a campaign or canvass, which will open with as much vigor for the United States senator immediately after the election shall have been held —

Senator WINSLOW — I rise to a point of order, that the question before the House is simply upon taking up the order of business on the 20th of November.

The PRESIDENT — The Chair thinks the senator from the twenty-sixth is in order.

Senator WINSLOW — And that it is not in order to make a political speech now.

Senator JOHNSON — The gentleman and the Chair do not agree. Mr. President, I do not propose to make a political speech.

Senator BOWEN — Mr. President: Is it in order to debate a question on the mere order of business? I submit not. I understand

the rule to be settled that the order of business is not debatable; that is the only question pending.

Senator JOHNSON — That is just the question I am discussing.

Senator BOWEN — That is not debatable.

The PRESIDENT — The Chair thinks, without having his attention called particularly to the rule, that that is in order; rules that the point of order is not well taken, and the senator from the twenty-sixth will proceed, confining himself to the question before the Senate.

Senator JOHNSON — I will do so, Mr. President, as a matter of course, claiming the indulgence of the Senate, and I will detain you but a moment. What I was going to say in regard to that was, that that campaign which will open with a good deal of interest on either side —

Senator D. P. WOOD — Mr. President: I rise to a point of order. I dislike to interrupt the senator from the twenty-sixth in his political harangue; but, sir, the question before the Senate is as to the disposition of these two cases upon the adjourned day to which this Senate has determined to adjourn. Now, sir, any thing to be said upon the propriety of taking up those cases in the order named and dispose of them would be in order; but I do submit that any general discussion of the propriety of postponing is out of order.

Senator JOHNSON — Mr. President: That is just the point I was going to discuss, and as a matter of course the remarks I made were preliminary to that point.

The PRESIDENT — The Chair will hold on this question that the senator from the twenty-sixth is in order, and he will proceed with his speech.

Senator WINSLOW — Mr. President: I would like to inquire whether the five minutes rule applies to debate.

Senator JOHNSON — Mr. President: I believe I have the floor.

The PRESIDENT — The senator from the twenty-sixth has the floor.

Senator JOHNSON — Therefore, as I was saying, a campaign in which every individual and every senator will have a deep interest, which will commence immediately upon the conclusion of the election, in regard to the election of a United States senator, and I would like to ask whether the Senate will be prepared better at that time than any other, and will they be prepared to take up the Prindle case better at that time than they will the Curtis case? You see I am getting right down to the question now, as to which case they will take up.

Senator WINSLOW — We are to take them both up.

Senator JOHNSON—The impropriety of that, Mr. President, is the fact, as is apparent—as has been apparent in this case—the witnesses in the Curtis case have been subpœnaed to attend here by the 11th The Prindle case was to be disposed of on the 10th. The witnesses, as I understand, have all been subpœnaed, and if they have not arrived they will be here to-morrow morning; but make a specific day in which the Prindle case is to be disposed of, and then allowing whatever time is necessary to dispose of the Prindle case, so that the witnesses in the Curtis case may be subpœnaed for the Curtis case, and, it seems to me, that will be an improvement.

Senator D. P. WOOD—Mr. President: That is a very reasonable suggestion of the senator from the twenty-sixth; it had occurred to me, but there was a little difficulty in embodying it in my motion, and still, if the senator desires it, I will do so.

Senator J. WOODS—We can probably ascertain by counsel what length of time will be taken in the disposition of this case; I think it will consume about two days; I think that is as near as we can guess at it.

Mr. MYGATT—Not beyond two days on both sides; we think we might dispose of it in one day; we are willing, on our part, to make it short.

Senator BENEDICT—Mr. President: It will be remembered we took short of three days to make the decision in Judge Barnard's case, and here are fifty-four charges; we have to call the ayes and noes on fifty-four items, and take every senator's vote.

Senator D. P. WOOD—Mr. President: My own judgment of it is that we cannot dispose of the Prindle case in less than three days; taking into consideration the charges, after the summing up is closed, and the vote, I don't think we can dispose of it in less than three days, and if we did get through in less than three, that the Curtis witnesses might not be here, therefore I would allow for two days, concluding the Curtis witnesses would be here one day in advance, for the sake of having no failure to connect. Therefore, at the suggestion of the senator from the twenty-sixth, I will amend my motion to allow two days for the disposition of the Prindle case, setting down the Curtis case for the 22d. That will be Friday, rather an unfavorable day to begin the trial of a case, but as we shall then be in the latter part of the year—

Senator WINSLOW—Will the senator allow me a question? Do we understand him to say that it would be unfavorable for the people or the accused?

Senator D. P. Wood—In the first place, to the probability of the senators being in their places on Friday to commence the case; the probability is, if they follow the usual course, they will adjourn about that day over to the next week; but, sir, for the sake of having the day fixed on which the Curtis case is to be taken up, I will amend the motion by fixing the twenty-second. I wish to say one word, which seems to have been made necessary by some remark which has dropped from the senator from the twenty-sixth, I presume inadvertently. One would suppose that the disposition of the case that has been made by the Senate has been governed somewhat by considerations which, I think, are foreign from the mind of every senator who has voted upon it. Now, sir, it is to be borne in mind, that, in order to dispose of any of these cases under the Constitution; to dispose of them as the people expect they will be disposed of, we must have twenty-two senators here present at least; and then, in case a case is made out where there is no question of the duty of the Senate to convict, unless there is twenty-two votes present the party cannot be convicted; now, it is notorious that we have not that number here, and there is no probability that we shall be able, at this time of the year, to keep that number here, and it is worse than futile for us to go on with one of these cases without a larger number than that to participate in the decision. Now, sir, the senator's friends are not here; there is only three-sevenths of the democratic vote present here, and they are so engaged in the exciting political campaign going on, I have no expectation they will be here—

Senator Johnson—Tweed has gone to Europe.

Senator D. P. Wood—That may be, but he is not here, and his vote, the senator knows, counts just the same as if he were here and voting for an acquittal; with this state of facts, having sat the whole year, from the first day of January until now, almost in continual session, it is more than can be expected that this Senate shall be kept full at this time of the year, and I don't make this suggestion to bring any reproach or censure upon the senator's friends and persons who are not here, or upon any others; it is with the utmost difficulty that these senators are here who are here to-day; some of them came here avowedly to make a quorum, that they might adjourn, announcing they can be here no longer than a single day. It is of no consequence that we should decide these questions to-day, this month, or next month; it is of vast importance that when they are decided they should be decided by a full Senate, and decided deliberately after a careful consideration; and I think the people of the State of New York will appreciate the action of this Senate, not only in what it

has done but in what it proposes to do; that when it proposes to adjourn to a time, that there shall be a full Senate ready and able to perform every duty as the people expect they will perform it. I have said this much that it might go out that there was no improper motive actuating this body in taking the action it has taken to-day.

The question was submitted to the Senate, on the motion of the senator from the twenty-second, that on the 20th day of November next, at ten o'clock, A. M., the case of Judge Prindle be proceeded with, and that on the 22d day of November, at 10 A. M., or immediately after the conclusion of the case of Judge Prindle, that the case of Judge Curtis be taken up and the trial then proceeded with, and that the Clerk notify the respective parties of this adjournment, and the witnesses subpœnaed in the Curtis case, and resulted as follows: affirmative, 17; negative, 2.

Senator WINSLOW — Mr. President: I move the Senate do now adjourn.

The question was submitted to the Senate, on the motion of the senator from the eighteenth, and decided in the affirmative. The PRESIDENT announced the Senate adjourned until the 20th day of November next, at 10 A. M.

November 20th, 1872, 10 A. M.

Senate met in pursuant to adjournment.

Senator BENEDICT the chair.

The CLERK called the roll and announced the presence of fourteen senators.

Senator CHATFIELD — Mr. President: I move that we take a recess until four o'clock this afternoon.

Senator TIEMANN — Mr. President: If I am in order I suggest an amendment to that, to direct the Clerk to telegraph to all the absent members, and state to them the necessity of their being here. Will the gentleman accept the amendment?

Senator DICKINSON — Mr. President: I move to amend, to make it three o'clock instead of four. I think it is necessary to get to business as soon as possible, and the trains will be in from New York and the west by that time.

The question was submitted to the Senate on the motion of Senator Dickinson, and it was declared lost; Senator DICKINSON called for a count on his amendment, which resulted as follows: Affirmative, 6; negative, 4; whereupon the amendment was declared

carried. The resolution was then submitted to the Senate as amended, and declared carried.

Senate re-assembled at 3 P. M., November 20, 1872.

The CLERK called the roll, and announced the presence of nineteen senators.

The PRESIDENT — The Chair understands the first business in order is the argument of the counsel; is the counsel ready to proceed?

Mr. PECKHAM — Mr. President: So far as the counsel for the people are concerned, we would say that we are entirely ready to proceed, but that it does not seem to us very appropriate to go on with the argument in a case of this kind where we require two-thirds of all the senators elected to the Senate to convict the accused, and where, with the number present, we could not secure a conviction even with the unanimous vote of every senator; this case has been tried, and the evidence closed last July; from that time until this the Senate has been, so far as this case is concerned, in recess, but they have heard another and very important cause where many witnesses were examined, and just got through with a political canvass which I suppose has taken up some of the time of the members of the Senate, and I do not believe that any member of the Senate is to-day in that condition, as to the knowledge of this case, that he is prepared to vote upon it without some more examination, and certainly some argument of counsel in regard to the case; that being so, it seems to me that if it could by any possibility be done, a larger number than a mere quorum should be present here to listen to the argument of the counsel, if the arguments of counsel are to have any weight at all. If they are simply for the purpose of going through a farce or unnecessary form, why, of course, as few senators here to hear those arguments the better. But it seems to me that, with the time that has elapsed since the Senate has heard the testimony in this case, and with the circumstances that have taken place since that testimony has closed, the case and the evidence is now so much out of the mind of the senators that, without the benefit of an oral argument of the cause, they are not ready, and cannot be ready, to proceed to a vote in this case. The counsel employed for the people, and for the respondent also, have given this case, of course, more thought and a very close examination since the Senate was here in July and since the evidence closed, and, of course, they will be prepared to refer the senators to that particular class of testimony in support of or in defense of any alleged charge in the case that they necessarily ought to have in their mind, fresh and familiar to them,

before proceeding to vote upon a question of this importance, both to the State at large and to the respondent in this case; and I therefore ask, under these circumstances, feeling that justice cannot be done in this case, and that a vote cannot be reached understandingly by the senators, until sufficient to convict the respondent, if he ought to be convicted, unless this testimony be commented upon and brought to the recollection of the Senate more at large than would be done where we have but seventeen senators present, and as I said before, where you would have to have more than a unanimous vote of those present before a conviction could be secured. We, therefore, respectfully beg leave of the Senate to ask that we be not forced to go to an argument of this cause before a tribunal where, as in the present instance, at the present time, we must have more than the unanimous vote of the senators hearing us before we can secure the constitutional vote necessary to a conviction.

Mr. MYGATT — Mr. President: It is now one year since Judge Prindle was last elected to the office of county judge; it is more than one year since the accusations upon which he has been tried before the Senate were made against him; the subject has been a constant subject of excitement in the county where I live for the year past; it was before the people at the election a year ago; it was before the grand jury of the county for ten days; it has been before the people ever since; it has been before this Senate now nearly ten months; it was presented to the Governor soon after the commencement of the session in January last. Judge Prindle has obeyed all the citations that have been issued against him; he has been present before all the meetings of this honorable Senate; he came before the Governor when summoned, and has come to the city of Albany some ten times to answer the charges and attend the hearing. I may not be accurate in the number, but it is something like that. He has always been ready to meet the accusations against him, and he is now ready to have this matter concluded before this honorable body; it is oppressive to him the longer it is delayed. We proposed in July last, before the close of the evidence, to submit the case without any argument. There was then a full quorum present, and there was sufficient senators present to convict or acquit. There is no certainty that there will be many more senators present during this year, and if it is to be adjourned to a future day, that is during this year, what assurance is there that there will be many more senators than there are now present? I am informed, perhaps not correctly, that the Clerk has information from some senators that they cannot be here at this time, and it may be that there are so many senators

absent that even if the time is extended for a few days, or few weeks, there will be no assurance of their being present in the future. We do not propose, upon our side, to make an elaborate argument to this Senate. We come here three counsel upon a side, but we propose to confine our argument to one, upon our side, as sufficient to argue this case; I understand on the other side two counsel will argue. In that event I suppose one will open and we will reply, and the gentleman reply to us, which will conclude the whole matter. I do not know that this is fixed upon as a final conclusion, but that is the present idea we have of the case; but we must most earnestly insist against any postponement whatever in this case, as being oppressive to Judge Prindle, who is entitled to a speedy trial; he is sitting now as county judge in the county of Chenango, constantly trying causes of the greatest magnitude, and so long as this proceeding is pending, his power, his position, is very much impaired, and he should be removed from office or honorably acquitted by this Senate, that the course of justice may go on smoothly and not be interrupted by these proceedings. We, therefore, ask that this case proceed at once.

Mr. PECKHAM — Mr. President: A single word in reply; it seems to me that unless this case is to terminate in a farce, that the application that is made on the part of the people should be granted. Suppose we were to go on, in accordance with the request now made by the counsel for the respondent, and finish this case, and by the time we have finished it find but seventeen or eighteen or nineteen senators present, what is the use of going on? What is the use of taking a vote? Suppose you had an unanimous opinion of every senator that the respondent was guilty and ought to be removed, what good would that do the people of the State — the people of Chenango county, who are so deeply interested in this event? None whatever. And the very fact that my learned friend on the other side is seemingly so anxious to go on, under the state of facts here to-day, it seems to me is a strong reason — almost a demonstration — why this Senate should not insist upon having the argument go on while there is not a sufficient number present, listening to it, to vote a conviction and removal of the accused, if he should receive the unanimous vote of every senator present. In regard to summing up here, my understanding was, at the time the Senate adjourned in July last, that there would, probably, but one counsel argue on a side, and the counsel for the people had come here in September last prepared for but one counsel. When we arrived here, as I understood it, it was a request, made on the part of the other side,

that two should sum up, in order that they might learn the side of the case that we took — the points we proposed to make.

Mr. E. H. PRINDLE — I suppose the only talk was between Mr. Stanton and myself.

Mr. PECKHAM — Certainly it was.

Mr. E. H. PRINDLE — Mr. Stanton is well aware of that, and can state about it. We have had no understanding about it as to how many should sum up on either side; there was nothing of the kind. After we came into the Senate, Mr. Stanton informed me that he didn't care to have but one sum up on a side, and we acquiesced in that arrangement, and immediately after the adjournment was announced, Mr. Stanton stated to me that they might possibly, in view of the adjournment, want two, and I have not been able to ascertain until to-day whether two were desired upon that side or one, but we had come to the conclusion that but one would speak on our side.

Mr. PECKHAM — That was my understanding of the question, as derived from Mr. Stanton; that from the talking between the two (Mr. Prindle and Mr. Stanton), there had been, as I understood, a desire expressed on the part of the respondent's counsel that more than one should sum up on the part of the people, in order that they might be possessed of the points taken on our side, and thus to enable them to answer them in their defense. However that may be, acting under that impression, and with that view since the adjournment of the Senate in September, I had prepared myself to make a general summary of the evidence, in reply to the counsel on the other side, and closing the case on the part of the people; and as I had understood from Mr. Stanton he had prepared himself in regard to the evidence as to each one of these charges, which I have no doubt senators must desire to have in their heads in some form or other, so that they may give a vote understandingly upon this question, and therefore Mr. Stanton had, as I understand, prepared himself to refer to different witnesses, and the testimony given by each in support of each charge made in this bundle of charges, and also referring to the evidence on the part of the accused, in relation thereto, as far as that goes. If they do not desire that, why of course it can be gone through, the argument may be made by one counsel, but of course the time spent by that one counsel in going through the same kind of argument, referring to the same kind of testimony, will be taken up exactly the same whether made by one or two, and in the one case the counsel for the other side don't have the benefit of the presentation of the case on that point; however that may be,

we are not strenuous on that point. The Senate will decide for themselves in that matter. What we do desire is, that when this argument is had; when we are to refer this court to the evidence which we say is taken, and now lies in this record, that the senators who are to pass upon that record shall hear one side of the case, and shall have the testimony, which we say conduces unerringly and certainly to the condemnation of this accused, placed before them in such a manner that they can see it and refer to it, and have their recollections refreshed upon it with a full knowledge of its importance, and of the testimony that has been taken in the case. That is all we ask; if this case is to go on now, and is to be pressed on in such a way that the Senate themselves, not a member of which really, at this present time, recollects all the testimony taken in this case, or has his recollection drawn to those particular parts of the testimony which the counsel for the prosecution may regard as necessary and vital in this case, and yet insists we shall argue this case in that manner, there need be no word on the other side. They may say: "Take your vote, gentlemen; let there be an unanimous vote of condemnation, and we snap our fingers in your face; you have not a sufficient number here to make this a proceeding which can be effectual, and which can result, even if you find a verdict of guilty, in the removal of the respondent from office." It may be added, of course, that some other senators may come here at some future time and look over this testimony at some future period, and then the Senate may, at some future time, come to a decision in regard to it; but the question that is to be addressed to you as senators, as sensible men, as whether you think that conduces to justice in this case; to an intelligent discharge of your duties in this case; and to the duty of the other senators who will not have heard one word of the argument, and who may not have heard one syllable of the testimony, and yet vote upon a question of this importance, with not a particle of knowledge of what took place in this court, except what they may derive by the perusal of this dry record as taken in this book. Under these circumstances, I say as counsel for the people in this matter, for the prosecution, we should regard it as nothing more nor less than an abondonment entirely of this prosecution, as a result farcical in its nature, to go on now and argue this case, and to pretend gravely to call the attention of the senators to evidence which they have not heard in months; and there are senators absent to-day who may not have heard a single word of this, and yet they are to be called upon at some future period, indefinite in its nature, and without the benefit of any oral argument whatever, without the benefit

of having seen or heard one of the witnesses, to be called to aid and assist the rest of the Senate in order to form a constitutional quorum, so to speak, upon which it would be the merest farce in the world, even upon the record, to take a vote. The farce remains exactly the same, it seems to me, if the senators who are thus called in to aid the senators now present upon the question, if they know nothing about it, excepting what they may have heard or read months ago, without having their attention called to parts of that testimony—its materiality—by persons who have spent weeks in that labor since the adjournment of this Senate. Of course, it rests entirely with this Senate to say what they will do under these circumstances; but if, as it seems to me now, there is not that majority here now which there ought to be, why, I suppose, by an adjournment until to-morrow, they can send their sergeant-at-arms, or notification in some form, to those senators now absent and who may be procured to attend upon this session, so that their attendance shall be procured and they will be in their places to hear the argument on the part of the people and on the part of the defense; otherwise, it seems to me this trial results in a simple, unmitigated and total failure.

Senator BENEDICT—Mr. President: It seems to me that, for the purpose of this investigation, with the view the Senate has taken of it hitherto, we are but a committee. We are not a quorum, because we cannot take any vote upon this question which, as has been said by one of the counsel, if it be unanimous, would decide the question. Now, it is the practice of courts (as the lawyers who are members of the court will well remember), if there is a member of the court who has not heard the argument, he begs to be excused and does not join in the decision, so that he takes no part in the decision because he did not hear the argument. If there is any thing in the world that ought to be heard by the Senate, in a reasonably full Senate, it seems to me it is the argument of the cause. Lawyers, perhaps, take too ready a view of that—come to that conclusion, perhaps, too readily—that they are arguments of a great deal of importance, and I think they are, and I want to hear the argument of counsel in this case, and here I am, and others want to hear the argument, but they are not here; but ought we, under these circumstances, to force this discussion under such circumstances that when we come to take the vote, whenever it will be, there will be a large portion of the senators that will have just grounds to say, not having heard the evidence or the argument, "I decline to take part in the decision of this case;" and then we find ourselves without a quorum of senators who will join in the decision? Just so far as

this thing is judicial, just so far I think that there should be an opportunity given to have the subject fully discussed. I shall concur, so far as that is concerned, in the suggestion that has been made here, that it is quite possible we may not get a full Senate. Several senators are sick, and some, it is understood, will necessarily be absent the whole of the residue of this year. I should think it quite practicable—quite just—that we should hear this argument in one of the first days of January in this session, when this Senate will be full, or all the senators we can expect to have here. In the first week of January hear the argument, and dispose of the case then. I feel a very strong conviction that we shall have a short session of this autumn session; I hope it will be otherwise if the case goes on. But, it seems to me, there is the greatest force in the suggestions made by counsel, that we should not hear the case argued before eighteen or nineteen senators alone, to the exclusion of others. If they are not willing to take any action about it until as late a period as I suggested, then we ought to go over until to-morrow. I believe there are one or two senators in town who are not here now. Some one says to-morrow we may have more, but I do not think it likely that to-morrow we will have what we call a full Senate. I have no hesitation in saying that I should prefer that the further hearing of this case should go to the first Tuesday or the first Wednesday in January next. We meet the first Tuesday. I had as lieve say the first Tuesday as any other day. I only put it the first Wednesday so as to allow all the senators to get together at that time. If the public service was suffering in Chenango county—if Judge Prindle was suspended in his duty—then I should be for hurrying this thing on.

Senator PERRY — Mr. President: I regret to be called upon to interrupt the senator. Of course, his remarks are intended to be addressed to the Senate, and I think if we discuss this proposition among ourselves we should go into private consultation; before doing that, however, if the senator will allow me, I should like to inquire what is the condition of the Curtis case? Are we to proceed with that? When is it to be taken up?

The PRESIDENT — So far as the Chair has any information, it will be taken up immediately on the close of this case. I am informed the witnesses are subpœnaed to be here on Friday next, by the Clerk.

Senator PERRY — Mr. President: If there are to be no further remarks made by the attorneys in the case, I move that we go into private consultation.

The PRESIDENT submitted to the Senate the motion of Senator Perry, and declared it carried.

Whereupon the Senate went into secret session.

At the opening of the doors the President made the following announcement:

The Chair will state, for the information of the counsel of the people and the counsel of the respondent, in the case of Judge Prindle, the Senate have adopted a resolution postponing the further consideration of the case until to-morrow morning at ten o'clock, at which time they have directed that the argument of the case shall proceed.

Mr. PECKHAM — Mr. President: That means we are to see then whether we are to have more than a mere quorum or not?

The PRESIDENT — The Chair will say in answer to the inquiry of the counsel, that it will be impossible for the Senate to proceed without a quorum. The supposition is, and the understanding of the Chair is, that if a quorum is present the argument will then be proceeded with; although, of course, the Senate reserve to themselves the right to take any other action different from that to-morrow morning if the circumstances warrant. I might say in explanation of that action (perhaps it is proper I should do so), that it has been suggested that in case simply a quorum of the Senate is present, the argument of the case be printed, and that it be placed before the senators who are absent, in order, when a decision is reached, that they may then participate in that decision, although I do not know that the Senate adopted any express rule of that character.

Senator D. P. WOOD — Mr. President: I will state to the counsel that there is a strong probability that to-morrow we shall have more than twenty-two senators present, without much doubt, if not twenty-five or twenty-six.

Mr. PECKHAM — Mr. President: In that event, of course, we have nothing to say one way or the other. If there should be any number less than sufficient to convict, we may make appropriate remarks when the time comes.

Senator LOWERY — Mr. President: I move, sir, that the Clerk be instructed to telegraph the absent senators to be here to-morrow morning at ten o'clock.

Senator TIEMANN — Will the senator name the senators whom he would have the Clerk telegraph to?

Senator LOWERY — Yes, sir; all the absent senators.

Senator TIEMANN — Does the senator mean to include those who have sent word that they are sick, and unable to attend?

Senator LOWERY — I think it is well enough to telegraph them all; I understand one or two of the senators cannot be brought here by to-morrow; perhaps the Clerk ought to be left to his own judgment in that respect.

Senator TIEMANN — There is one senator who has never taken his seat; shall he be telegraphed to?.

Senator LOWERY — It is time he were here, if he is to come at all.

Senator D. P. WOOD — Mr. President: I wish to add, as an amendment, that he also state to them that the Senate are prevented from proceeding with the business for which they are assembled, in consequence of their absence, and unless they make their appearance there will be a call of the Senate.

Senator TIEMANN — Mr. President: The senator elected in place of Mr. Hardenburgh would have a right to take his place here to-morrow, if he has the certificate of election.

Senator D. P. WOOD — Mr. President: In relation to the number of senators the Clerk should telegraph to, he, of course, will exercise his discretion. He won't telegraph a man who has not got his certificate, and it would not include him, and it would not include the senator from the fourth, because he has never been here. We have instructed the Clerk several times to telegraph, and he has exercised his discretion, and there may be some that can come that we don't think now can come.

The question was submitted to the Senate and declared carried.

Senator CHATFIELD — Mr. President: I move the Senate do now adjourn until to-morrow morning at ten o'clock.

The question was submitted on Senator Chatfield's motion, and it was declared carried.

Adjourned to November 21.

November 21, 1872, 10 A. M.

The Senate met pursuant to adjournment.

The CLERK called the roll, and announced the presence of twenty-two senators.

The PRESIDENT — The first business in order is the argument in the case of Judge Prindle.

Mr. STANTON arose and said:

Mr. President and Senators:— You have again assembled for the purpose of completing the extraordinary labors which have devolved upon this Senate, in addition to the usual legislative and executive duties of senators; those labors imposed upon you by the people of the State through the Constitution as a safeguard, that the people may not suffer through the improvidence, the mistakes or corruption of the people of any county or district who may be intrusted with the selection of judicial officers; that unfit and dangerous men, who have succeeded by means either fair or fraudulent in getting into office, shall not of necessity be continued therein to prey upon the public; and to exercise that wholesome control over the judiciary of the State, or shall tend to its elevation and purity. In this case of the *The People* v. *Horace G. Prindle*, county judge of Chenango county, to which your attention is again called, the proofs have been all taken, many of you listened to them, as they were developed, and undoubtedly recollect the main features of the case. Others of you were unavoidably absent, and, while you may have familiarized yourselves with the proofs, by reading the printed case, yet it is so voluminous that great labor is necessarily involved, and without an interest in the case which can hardly be expected, many points must escape notice, and the relevancy and force of much of the evidence be unobserved. For the purpose of assisting you in making the investigation required by the Constitution, you have permitted counsel familiar with the facts to appear on both sides of the case who have conducted the examination, and thus given to your investigation the form of a trial at law.

As in the summing up of a cause heard by a jury, importance has ever been attributed to the arguments of the counsel, as a means of eliciting truth, calling attention to the proofs and points favorable to each side, that nothing of importance may be overlooked or forgotten, so in this case probably counsel can assist you no more effectually than by analyzing the evidence, which is voluminous, and grouping together under each charge all that pertains to it, enabling you to see at a glance whether or not it has been sustained. Especially does this seem desirable and important, since, under the rules, you are to pass upon each charge separately. I shall, therefore, in what I have to say, attempt to confine myself strictly to this course, giving you as fair and impartial a statement of the evidence on both sides as I shall be able to give, and, in connection therewith, make some remarks upon the nature and object of the laws which have been violated, upon the force and bearing of the evidence, upon

the character of the offenses committed, and upon the effect not only upon the judiciary of the State, but upon that vast army of subordinate officers throughout our commonwealth, whose official action will of necessity be guided by the interpretation which you, as the highest legislative body in the State, shall put upon the various statutes enacted by your predecessors, deemed by them essential to the welfare and prosperity of the State; those officers who will judge of the necessity of the observance and enforcement of such laws by the criterion of official duty which you shall establish as the measure of the faithfulness of judicial officers intrusted with their administration. It is unnecessary to dwell upon the importance of this case.

All are fully impressed with this. An investigation originally commenced by the board of supervisors of Chenango county, and continued until, baffled in their efforts by the refractory conduct of the respondent, they officially requested its continuance *here*, where alone a remedy could be administered. Officially instituted before you by the recommendation of the chief magistrate of the State in a special message to you, thus making it a prosecution on behalf of the people of the whole State, involving not only the professional and official character of the respondent, but the honor and standing of the judiciary of the State, cannot but be important, whatever may be the nature or gravity of the offenses charged. Before proceeding to a consideration of the evidence, I desire to call the attention of the Senate to the law and practice as to the amount of proof required to sustain a charge. Greenleaf in his work on Evidence, vol. 1, § 56, says: A second rule which governs in the production of evidence is, that it is sufficient if the substance of the issue be proved;" and in the third volume of his work, section twenty-three, he says this rule is equally applicable to both criminal and civil cases. Again, in vol. 1, § 63, he says: "In general, the allegations of time, place, quantity, quality and value, when not descriptive of the identity of the subject of the action, will be found immaterial, and need not be proved strictly as alleged. Thus, in trespass to the person, the material fact is the assault and battery, the time and place not being material. And in an action on a policy of insurance, the material allegation is the loss, but whether total or partial is not material. Thus, also, proof of cutting the precise number of trees alleged to have been cut in trespass, or of the exact amount of rent alleged to be in arrear in replevin, or the precise value of the goods taken in trespass or trover, is not necessary. Neither is matter of aggravation, namely, that which only tends to increase the damages and does not concern the right of action itself,

of the substance of the issue." Again, in § 59 of vol. 1, speaking of those words which are merely formal: "Thus, in trover, for example, the allegation that the plaintiff lost the goods and that the defendant found them is regarded as purely formal, requiring no proof, for the gist of the action is conversion. So in indictments for homicide, though the death is alleged to have been caused by a particular instrument, this averment is but formal, and it is sufficient if the manner of death agree in substance with that which is charged, though the instrument be different, as of a wound alleged to have been given with a sword, be proved to have been inflicted with an ax." And this is the practice of the court under the strict rules of the common law. In Prescott's trial, page 195, the practice in impeachment trials, certainly more formal and technical than this proceeding, is thus laid down by the managers in connection with an exhaustive citation of authorities: "If we examine the precedents we shall find them conformable to this doctrine. The articles of impeachment state certain facts generally, importing some offense or violation of the law, without much regard to time, place or circumstance, but with sufficient certainty to give the accused direct information of what he is charged. The precise species of crime or offense is not usually, if ever, stated according to common-law definition; but he is charged with the breach of some law provided for the case, with a breach of trust, with a violation of his oath of office, with acting contrary to his duties, etc., etc. Such are the articles in the case of Lord Macclesfield, etc., Warren Hastings, Lord Melville and Judge Chase. Such has been our own practice in the few cases of impeachment which have occurred since the adoption of the Constitution, as it appears from the records of the courts." These authorities are cited for the purpose of impressing upon your minds this principle, that in order to find a charge proven, it is not necessary that every technical or collateral averment must be strictly proved. If those matters which go to make up the substance of the offense charged be proved, the charge itself is *in law* and legal effect sustained; and to seize upon allegations collateral to the issue made by the charge, which, perchance, are unproved, and make it the occasion of finding the charge "not proven," though otherwise sustained, would be both illogical and illegal. While I might naturally desire, in discussing the proofs, to take up some of the graver matters, the more serious offenses charged, first, it will undoubtedly lead to less confusion to take the charges in their order, and I therefore invite your attention to the first charge.

The substance of the charge is that the respondent has personally drawn papers to be used before himself, in his official capacity, and has charged and received fees therefor, in cases not authorized by law. The statute law of 1830, chapter 320, § 38, is as follows:

"No judge, commissioner, or other judicial officer, shall demand or receive any fees or other compensation for giving his advice in any matter or thing pending before such judge or officer, or which he has reason to believe will be brought before him for decision; or for drafting or preparing any papers or other proceedings relating to any such matter or thing, except in those cases where fees are expressly given by law to such judge or officer, for services performed by him."

On the 25th of April, 1867, the following act was passed (§ 16 of chapter 782):

"From and after the passage of this act, no surrogate shall charge or receive any fee or compensation for any official services performed by him."

Surrogates previous to this were authorized by law to charge for drawing nearly or quite all papers pertaining to the duties of surrogate, according to a fee bill, which will be hereafter noticed more fully. Justices of the peace were and are now authorized to charge, in certain cases, for papers drawn by them to be used before them. Except as thus expressly authorized, this statute makes it a misdemeanor to demand or receive any fee or other compensation for giving his advice in any matter pending before him, or for drafting any papers relating to any such proceeding. This act of 1867 was well known to the respondent, as he claims to have stopped exacting fees, as such, after its passage; and his henchman, Ray, tells us, I think, the first knowledge Judge Prindle had that fees were abolished was along in July, sometime, of 1867. Judge Prindle told Solomon Bundy that he had never charged fees and never should do it. Now, then, for the proofs sustaining this charge. I call your attention to the case (page 312): When we got through proving the will, I asked the judge what his charges were or would be for the final settlement of the whole thing; he said about twenty-five dollars; I asked him if that would cover the whole expenses, and he said he thought it would, and I paid him twenty-five dollars; I supposed that would be the end of it; and he made out the necessary papers for me that day; there was nobody else to do it but him.

Again upon the same page (312) of the case, in the evidence of Frederick B. Coats:

Q. State whether you paid him any thing for that, or what conversation occurred in reference to payment, if any? A. Well, when he got through I asked him if there was any extra charge for that, and he said I might pay him two dollars, and I did so; then, when I went down to make the final settlement, I went to his office, and the judge was in the back office when I went in; he pretty soon came out and I told him I had come to settle up the will, and I was in something of a hurry, and would like to get back on the afternoon train, which left about one o'clock; he said he would be ready soon; he went down stairs, and said he would be back soon; pretty soon Mr. Ray came up; I supposed it was Mr. Ray; I didn't know him before; he asked me if I was the man that had come to settle the Cassels estate; I told him I was; he asked me for my account; then I asked him if he was Judge Prindle's clerk, and he said no; well, I told him I had paid Judge Prindle for doing that business, and I suppose he would do it for me; I didn't wish to pay anybody else for doing it; he said he met Judge Prindle down stairs, and he had some little business to do, and he wished him to come up and do some little writing for me; well, I said, if that was so it was all right, and he went on and did the writing for the final settlement; when he got through, the judge came in and I told him I would like a receipt for what moneys I had paid him; he told Mr. Ray to write a receipt and he wrote one; when he got through he had got a little more charge against me, and I told him then I had paid him all he told me in the first place he should ask, and I thought I had paid him enough; finally, he said: "Let it go."

The point about the reference to which I call your attention is, that the judge there on that occasion charged Mr. Coats two dollars for drawing the necessary papers to give him, and notice to creditors to present claims against the estate which Mr. Coats represented, coming clearly within the first charge of charging for drawing papers to be used before him in his official capacity.

Again, in the case of Mrs. Russell (page 318 of the case), she testifies, near the middle of the page, that it was on the 5th of August, 1868. Now, then, near the bottom:

Q. State what conversation you had with him in reference to the amount of his fees for proving the will? A. Well, there wasn't much conversation about it; when he got through with the business I asked him what was to pay, and he told me.

Q. What did he say? A. Twelve dollars; I think that was the amount, as near as I can recollect now; I have never looked it over.

Q. Did you pay the money? A. I paid the money right there, on the spot.

Q. Who did you pay it to? A. Judge Prindle; I didn't see no other man in the office; I done business with no other man at all.

In the evidence of the respondent himself pertaining to that matter, he says (at page 895 in the case), when the question is put to him.

Q. You say that you drew the papers for Mrs. Russell? A. Yes, sir.

Q. How much did you charge her for that business? A. I don't think she paid any thing, except for the stamps.

Q. Do you say she didn't pay you the sum of $12? A. I don't think she did.

Q. Do you say she did not? A. I would not swear positive, but I have no recollection of it, and no entry on my cash book.

Q. Do you say she did not? A. I say I don't think she did.

Q. Well, sir, can you swear positive? A. That is the best I can state; I don't think she paid any thing except the stamps; I think the young man was sent out by me, and I told him how many stamps to get, and he went out and got them.

Q. Is that as strong as you can swear? A. I heard her swear she paid $12, but I have no entry of the kind, and my recollection is to the contrary.

Q. Can you swear any thing stronger than what you have already sworn? A. No, sir.

That is the evidence of the respondent himself. He does not deny positively, upon his oath, but that he did demand and receive from this woman for the purpose of drawing these papers to be used before him on the proof of the will the sum of $12.

Senator MURPHY — When was that?

Mr. STANTON — This was in 1868, the 5th day of August, over after the fees were abolished by law; and after his own clerk testifies that they had talked the matter over in the office, of the abolition of fees. At page 488 of the case, I call your attention to the evidence of Mr. Tilson. He went to Judge Prindle for the purpose of having commissioners appointed by him as county judge for the appraisal of damages upon a highway proceeding. He swears (page 488):

Q. You went directly to Judge Prindle? A. I did.

Q. What paper did he make out for you? A. He drew up a paper to go to the court and get the commissioners appointed.

Q. To go to what court? A. The court of Chenango county.

Q. Who was that court held by? A. Judge Prindle.

Q. Then he drew the paper to be used before him as judge? A. Yes, sir.

Q. What did he charge you for drawing the paper? A. For doing the whole business, I paid him ten dollars.

Q. Was the business done entirely before him? A. It was.

Q. When did you pay him? A. I paid him at the time.

Q. What was the date? A. The 1st of June, 1871.

The respondent himself testifies in reference to this charge at page 910 of the case. He says: "While you are speaking about my drawing papers, in regard to drawing the petition for appointment of commissioners, I stated to Mr. Tillotson, he came there in the first place and told me what he wanted, and wanted this question examined, whether a person owning land alongside of a proposed highway, where he was compelled to build a fence, and they did not take any of his land, whether he was entitled to have any damages appraised, and I told him he had better go to a lawyer and have him examine the question, and draw up the papers, and he urged me to do it, and wanted to know what it would cost, and I told him probably a lawyer would charge ten dollars, and he urged me to do it, and I examined the question pretty thoroughly, and it is quite a question, as any lawyer knows who has examined it, and afterward drew his paper, and he came in and paid me ten dollars," a square admission of the charge — "twelve shillings of that I paid to the clerk; the petition comprised nearly two sheets, with the description and all, and then the order that was drawn afterward was a lengthy order; it did not occur to me that there was any thing improper in my examining that question; it did not occur to me about the suit, or that there was any impropriety in regard to it; if I had charged him ten dollars for what I did on the examination there, and charge for, he would not have paid any charge for it. There was nothing that I was to act upon afterward in regard to it, and the matter couldn't come before me in any way possibly." He says that Mr. Tilson urged him strongly to do it in this evidence, if you recollect. I call your attention to the evidence of a witness who was by and heard the entire transaction (Mr. Roripaugh at page 489). He says at the top of the page: Tilson went there and told the judge that he wished to make an application to have some commissioners appointed to assess damages. He said that he had not got his application drawn up and that he would get a lawyer to do it. The judge said he would do it as cheap as any one, and if he wished him to do it he would. That is the evidence of Sheriff Roripaugh.

Instead of the judge refusing or declining to do it, or objecting to do it, and being urged to it by Mr. Tilson, the evidence of an impartial witness here who heard the proceedings, says that he proposed to get a lawyer to do it, and the judge proposed to do it himself; and that he would do it as cheap as any lawyer; what proofs could be more conclusive than these, so far as this charge goes? Again, the granting of letters in the King case (page 465 of the case), Mr. King testifies as follows:

Q. Do you know the respondent, Horace G. Prindle? A. I do.

Q. Transacted some business with him as surrogate? A. Yes, sir.

Q. When was the first business you did there? A. 25th December, '68.

Q. What business was that? A. I made an application to be made administrator to the estate of Fuller B. King.

Q. Were the letters issued at that time? A. They were.

Then again on the 466th page (the middle of the page):

Q. Who did you transact the business with at that time? A. Judge Prindle himself.

Q. Did you pay him any thing at that time? A. I did.

Q. How much did you pay him? A. Ten dollars.

Q. What was the value of the estate? A. I think it inventoried some $3,200; there may be something over; I could not say.

Q. Who furnished the stamps? A. I don't know; I didn't furnish them.

Now the stamps would have been in that case about two dollars. One dollar on the first $2,000 in value, and fifty cents in addition for every thousand dollars. In this case the business is entirely transacted with Judge Prindle, who draws the papers and charges $10 for that business transacted before himself as surrogate. I call your attention also in reference to this same matter to the evidence of Mr. Sewall, commencing at the bottom of page 471. Speaking of the conversation which he had with the respondent in reference to his charge of $10, in the case to which I have just alluded, Mr. Sewall testifies as follows:

Q. Do you know the respondent, Horace G. Prindle? A. I do.

Q. Did you have a conversation with him relative to taking $10 in granting letters of administration in the King estate? A. Yes, sir.

Q. Where was that conversation? A. At the county clerk's office, the 27th of last October, I think.

Q. What did he say relative to that? A. He asked me to bring up any point that I wished cleared up, that I thought dark in his transactions; I asked him to clear up that point; I asked him if he

drew those papers for him; he said he did; I asked him if he took the $10; he said he did; he said, "what of that? admitting I did, what of that?" I said, do you calculate you had a right to, and he said he had a perfect right to; that he did nothing wrong in doing so.

Q. Did he state in what respect it was right for him to take it? A. He says to me, supposing he had employed Isaac Newton to have done this business, and paid him fifteen dollars, do you think he would have done any thing wrong? Do you think Newton would have done any thing wrong? Says he, I charged him two-thirds of that. I have saved him one-third of it, and you accuse me of doing wrong.

I have thus called your attention to a few of the proofs bearing upon this charge, to which there is no claim nor pretense of claim, of any defense or excuse, not even that of ignorance of the law. In addition to these cases, there are numerous others, in fact nearly every case of taking fees which we have found, it seems to me, comes legally under this charge. For as we claim the law to be, and shall prove before we conclude, it is the duty of the surrogate to cause to be done in his office, free of charge, the necessary writing and drawing of papers for granting of letters testamentary, letters of guardianship and letters of administration. He is given a clerk for this purpose, whose compensation was paid by the county. In nearly every case where parties have applied to him for this work to be done, he has told them to go to Ray, knowing that Ray intended to charge for it; assisting Ray in collecting the money, in several instances receiving it himself; in one instance giving a receipt for it and signing Ray's own name; in a close imitation of Ray's own handwriting.

Mr. E. H. PRINDLE — Is there wrong in that?

Mr. STANTON — I wish we had the vouchers here, and I will ask the Clerk if he has the vouchers here that we introduced in evidence. I call your attention to page 495, in the evidence of Mr. Browning:

EXHIBIT No. 32.

"Received of William Browing, executor of the last will and testament of Robert Knowles, deceased, $27.50 for services and disbursements in the matter of proving said will.

"G. W. RAY."

"NORWICH, *February* 28, 1870."

At the top of page 495 he testifies:

"Q. You saw Judge Prindle when he wrote that receipt, did you? A. I think there was no one in the office except him and me; Mr.

Ray was not there at any rate. Thinking that, notwithstanding this evidence of the executor himself, it should be denied that Mr. Prindle himself wrote the receipt and signed Mr. Ray's name to it, I proposed to prove his handwriting by a witness subsequently called in the case — Mr. Barrows. You will see on page 501, as I was about to prove that fact, respondent's counsel says: "We admit that that receipt is in Mr. Prindle's handwriting.

Mr. STANTON — This receipt signed G. W. Ray?

Mr. GLOVER — Yes; the whole of it.

Mr. STANTON — You admit that the signature is in Judge Prindle's handwriting?

Mr. GLOVER — The whole of it."

If this business, for the doing of which the respondent referred people to Ray, was a part of his own duty, and he took this indirect course to collect fees which the law prohibited his charging directly, it is, in legal effect, the same as if he had done it directly, especially when we consider that Ray was continually performing services for the respondent, occupying his office, attending to his business, doing his "nice writing," as Ray himself swears, for which he received nothing but the privilege of making these charges and collecting the fees out of the parties referred to him by the surrogate, thus relieving the surrogate of a portion of his official duties, saving the expense of clerk hire he might be otherwise required to pay, and in this manner taking a portion, at least, of the profits made by such charges. But I pass on to the second charge. The substance of this charge is best shown by stating the separate propositions comprising it.

Senator MURPHY — Is there any provision of law which makes it his duty to draw these papers?

Mr. STANTON — I will discuss that under the fourth charge, where the question is more directly raised than it is here.

They are, 1st. That respondent declined to perform his duties, and referred parties to Ray. 2d. That Ray was at the time performing clerk's work in his office; in other words, that he was his clerk, or acting as a clerk for him. 3d. That he knew Ray intended to charge the parties for his work enough to pay him for doing that work and certain clerical work for the respondent. 4th. Tha the aided Ray in doing this, and thus entirely defeated the object and intent of the law abolishing surrogates' fees. These four propositions constitute the subject of this charge, and I shall proceed to remark upon them separately.

As to the first proposition, that he declined to perform his duties

and referred parties to Ray, I will not take up the time of the Senate in citing the proofs extensively; they are all through the case. Nearly every witness sworn for the people who had paid money into the office to Ray, was first sent to Ray by the respondent. Even Ray, who can remember so minutely the conversation that occurred between him or Judge Prindle, and nearly every witness that has been sworn as to what precise time in the course of business Judge Prindle went out or came into the office, as to whom money was paid, whether himself or the judge, that he assumes to contradict every witness, in the important points of the evidence, though such witness had transacted business there but one, two or three times in his life; even Ray testifies (pages 796 and 808): "I don't say that they have *intentionally* testified to any thing that was not so, but I do say that they have stated facts that did not exist; I think that some of these persons have honestly supposed when I have done the business, where they have been referred in that way" (that is, referred by the respondent), "and I have done the business for them and drawn the papers, perhaps they have honestly supposed that I was acting as surrogate's clerk.

Q. Don't you think, sir, that they have generally supposed that? A. No, sir.

Q. In these cases, sir, did you ever inform an executor or administrator, when he was referred to you by Judge Prindle, that you would charge him as an attorney at law for these services? A. Yes, sir.

Q. State what cases? A. In most every instance.

Q. You stated beforehand that you should charge them as an attorney at law? A. You wish me to confine myself to those cases in proof?

Q. Yes, sir. A. The Barrows estate is one; the Trask estate was another; Mr. Gregory understood it distinctly; I don't recall any other now."

Mr. E. H. PRINDLE — Wouldn't you read a little farther, that he offered to do it. If you will give me the charges I will look them over and find the conversation.

Mr. STANTON — I have no objection to that. At page 796 I call your attention to Mr. Ray's evidence again, at the middle of the page:

Q. At whose request have you done most of the business that you have done in the surrogate's office? A. At the request of the parties coming there. Judge Prindle almost invariably said to those parties coming there, "It is not my duty to draw these papers;

Ray is here, he is a young lawyer, and he will do it for you;" that is, I mean unless parties came directly to me.

Q. That was the usual course, that parties went to Judge Prindle, and he says, "Here is Mr. Ray; he is a young lawyer, and he will do it for you?" A. That was the usual course when they did not come to me directly.

Your honors will bear in mind the evidence of these parties who claim to have been required to pay this illegal fee, that, in almost every case, there is only, I think, two or three exceptions upon the part of the witnesses produced by the prosecution in this case, where they have not directly and positively testified that they never employed Mr. Ray in any capacity whatever; that they supposed he was a mere clerk there, and that they were sent to him by Judge Prindle. The fact even that other counsel was employed by the parties to go there, and that they went there with the papers fully prepared by an attorney whom they had employed, did not seem always to prevent their being referred to Ray in this same manner, and charged an attorney's fee notwithstanding. I refer you for that proposition to page 521, the evidence of Mr. Luther Brown. He had testified to the payment of $20, on the proof of the will of Mr. Lewis, at page 521, near the top of the page.

"Q. You had other counsel that you employed to attend to all of your business, when you needed counsel, besides Mr. Ray? A. Yes, sir.

Mr. PRINDLE — That is objected to; he had no counsel about this matter.

The WITNESS — I did, sir; I had counsel about this matter."

And in the Jacobs case, page 421 —

Mr. E. H. PRINDLE — Did you say Mr. Brown?

Mr. STANTON — I say the evidence of Mr. Luther Brown. His evidence commences on page 519; the bottom of the page you will see where he is sworn. At page 421, in the evidence of Mr. Charles Todd, who was the executor of the Jacobs estate, near the top of the page:

"Q. Do you know who had drawn the petition in the case for the proof of the will? A. I did.

Q. Who drew it? A. Henry Harrington, a lawyer of New Berlin, who was also a witness to the will."

He had testified that he had required him to pay $8.85 for the transaction of that business. And at page 727 of the case, in this famous document which they introduce in evidence upon their part,

you find (a little below the middle of the page) a statement showing that the fact that the party wanted to draw the papers himself did not make any difference, still he had to be referred to Mr. Ray and go through this ordinary form, and then pay Ray's bill. This is the report which was made by certain counsel who went and examined charges that had been made in one of the newspapers.

As to the charge made in the following language, "Samuel L. Brown, executor of Asher Baldwin, paid for drawing petition, $6; he asked for blanks to draw the petition himself, and the surrogate told him to let Mr. Ray draw it," we find that Mr. Ray drew the petition and all the other papers, went out and purchased the stamps and received the $6 for his services.

I suppose that the enormous service of going out, and purchasing six dollars' worth of stamps was probably what the six dollars was charged for. Mind you, it don't say here in this finding that he received the six dollars for the six dollars which he had expended for the stamps. He received the six dollars for his services; the stamps were paid for outside of that. Thus, when Mr. Samuel L. Brown, but a year ago a member of Assembly from our county, goes in there and asks for a paper to draw the petition; proposing to draw it himself, he, too, is referred to Mr. Ray to draw it, and compelled to pay Ray six dollars for his services upon that proceeding. Now, then, we come to the second proposition constituting a portion of the substance of this charge; and that is that Mr. Ray was at that time a clerk, doing clerical work in the office of this respondent. The first proof to which I call your attention under this charge will be found at page 503, in the evidence of Mr. Albert F. Gladding, who had examined the records of the surrogate's office with a view to seeing in whose handwriting those records were. He testified as to the number of letters of administration which had been issued during the various years, and says (near the bottom of the page) from July, 1866, to July, 1871, there are only thirty in Mr. Prindle's handwriting, and the rest were in Mr. Ray's, with the exception of one or two. Speaking of the records of letters of administration in the surrogate's office he testified:

"Q. All in Mr. Ray's handwriting, from what time? A. From July, 1866, to July, 1871, with the exception of thirty.

Q. With the exception of thirty in Judge Prindle's handwriting? A. With the exception of thirty in somebody else's handwriting besides Ray's; mainly in Judge Prindle's; one or two in somebody else's.

Q. How many since July, 1871, in the handwriting of George W Ray? A. There are thirty-one."

What stronger proof I ask you, senators, could be given of the fact that he held a clerk's position under this respondent? That is, writing the records of the office from day to day as these letters of administration are issued and recorded, daily engaged in this clerical work for the respondent, and yet they say he wasn't a clerk. Again, at page 424 in Mr. Gladding's evidence, commencing at the bottom of page 423:

"Q. You have been acquainted with George W. Ray how long? A. Fifteen years, perhaps.

Q. Have you seen him in the office at work upon the books of the surrogate at any time? A. Yes, sir.

Q. Have you frequently seen him? A. Very frequently.

Q. Writing the records of the office? A. Yes, sir.

Q. What other duties pertaining to the duties of surrogate's clerk? A. I have seen him make out citation papers; I have seen him drawing papers at the direction of the judge; I cannot specify the papers now."

I call your attention to page 518, to the evidence of Mr. Luther Brown, as he goes in there to transact some business with the surrogate, near the top of the page:

"Q. Did you ever employ Mr. Ray in any capacity? A. I don't know that I ever did, sir.

Q. How did he come to be there writing? A. Well, sir, he sat there in Judge Prindle's office, and I should say that Judge Prindle ordered him to do it; that is my impression, sir; I talked to Judge Prindle in regard to it and Mr. Ray done the writing; a portion of it."

Here we find Judge Prindle ordering Ray to do his clerical work. Any stronger evidence needed to show that he is a clerk in the office? I call your attention also to page 370 of the case. To the evidence of Mr. James G. Thompson. The Senate will recollect that in 1863 an act was passed which provided that the surrogate of a county might designate a clerk employed in his office to certify papers in his absence. This witness, Mr. James G. Thompson, in the county of Chenango, the county clerk, was the person that was thus designated and appointed. At the top of page 370 I will read a little of his evidence.

"Q. You were appointed clerk of the surrogate's court previous to 1864? A. Not previous; in 1864.

Q. Have you ever been appointed since that time? A. In 1868.

Have you got the appointment? A. I have not.

Q. Have you ever done any duty in the surrogate's court, and if so, what? A. I have certified papers as clerk of the surrogate's court, and that is the only thing I ever did.

"Q. About how many papers did you ever certify as clerk of the surrogate's court, to the best of your recollection? A. A few dozen at the outside; I cannot tell the number; not many; I may have done it fifty or a hundred times, but not very often at any rate.

Q. Did you ever do any work in the surrogate's office as clerk? A. Not any.

Q. Did you ever receive any of the pay of the surrogate's clerk, paid by the county judge of Chenango? A. I never did."

Now, then, at page 371, I call your attention to his evidence further, commencing at the bottom of page 370. And I wish to remark with reference to Mr. Thompson; in the first place he is a very strong and earnest friend of this respondent. He was appointed the surrogate's clerk, nominally at least, under this statute which provided that the surrogate might employ or designate a clerk employed in his office. Thompson swears he was never employed there. He had his office immediately under this respondent. And I state these things first by way of showing that Mr. Thompson would not admit any thing more than what must have been strictly true against this respondent, in consequence of his feelings. Secondly, to show what observation Mr. Thompson must have had of the proceedings in this office, and how good his judgment must be as to who did the clerical work in the office. And I now wish to read a little further from his evidence:

"Who has done the principal clerical work in that surrogate's office since 1867?" Mr. Mygatt made an objection. Turning over the top of page 371, the question was answered:

A. "I suppose Mr. Ray; I cannot answer with certainty, for I never examined the records to see; Mr. Ray was at work there, though.

Q. Do you not know that he has been in the office more than any other one person except the surrogate himself, and perhaps more than the surrogate? A. More than any one person, I should say he has.

Q. He has occupied the office all the time, has he not? A. Yes, sir, he has; but I cannot say that he has done so since 1867; I cannot state the date.

Q. Have you seen him writing the records of the office? A. I have."

Again, I call your attention to the evidence of Mr. Isaac S. Newton at page 398 of the case. Mr. Newton, a man who has had a great deal of practice in this surrogate's court. A little below the middle of the page:

"Q. I ask you the question as to whether you have seen George W. Ray performing the duties of a clerk in the office of the respondent as surrogate?

Mr. GROVER—It is better to ask what duties he has seen him perform.

A. During the last few years; I cannot tell how many years, but I have frequently seen him performing such duties as recording papers, copying citations, issuing citations and preparing affidavits of the proof of wills, and such like duties; I have frequently seen that.

Q. Where did you see him performing such duties? A. In the office of the surrogate; I have seen no other person performing them except Mr. Ray and the surrogate."

I call your attention particularly to that proof. This attorney, who has had more practice in the respondent's court than any other attorney in the county of Chenango, says that he never saw any other person performing these duties in the surrogate's office, but the surrogate and this man, Mr. Ray.

Again I call your attention to the evidence of Mr. John Murphy, at page 386 of the case:

"Q. State what further occurred between you and Judge Prindle after you paid this fifty dollars that you speak of? A. I supposed we was all through, and I started then out in the street and went down to the corner where Mr. Slater used to keep store, and there I stood, myself and my sister together, waiting for the bank to open, to go in and arrange some money that was in the bank; while I stood there Mr. Prindle came along down and spoke to me, and I spoke to him; he told me his clerk, Mr. Ray, had made a mistake of five dollars on stamps, and he wanted I should pay him five dollars more; I done so; he said no more."

And here is the evidence that, in 1868, this respondent designates this man as his clerk, and while the respondent himself comes upon the stand and testifies to this same charge, he nowhere denies this conversation, or this statement and proof of Mr. Murphy. It stands undenied through the entire case, thus admitting that he has even designated this man as his own clerk to parties who went there to transact business with him. I call your attention, also, to page 423

of the case. To the evidence of Mr. S. S. Stafford, an attorney at law, who went there to transact some business with the surrogate:

"Q. State what you know about George W. Ray's being the clerk; the acting clerk of Judge Prindle; state what knowledge you have of his transactions in that regard? A. It is very limited; I have seen him when I have been there; I have seen him writing in the office, and in relation to business of my own that I went there to get done; I went with a petition once, to obtain citations to the proof of a will; the judge was not in the office, and Ray prepared the citation, signed the judge's name to it, and gave me blanks to make copies; at page 445 I call your attention to the evidence of Mr. Shepard. After I had presented my accounts, and a statement had been made to him—a memorandum had been handed in—or at the time it was being made out, Judge Prindle said: 'Mr. Ray, you will put in twenty dollars for our services to day,' or something of that kind, and that was added and taken out of the estate.

Q. Had you employed Mr. Ray in any way in reference to the estate? A. I never had; I never employed anybody except Judge Prindle.

Q. Did you pay the twenty dollars that day? A. Yes, sir.

Q. Paid to whom? A. Paid the twenty dollars to Judge Prindle; I handed him the twenty dollars, with my individual note of $913, that was coming to the widow as surety that I should render unto her a mortgage that I had agreed to.

Q. How did you come to get the receipt for the money? A. Mr. Ray wrote the receipt while making the statement; he was making out the statement when Judge Prindle spoke to him about the money; I handed the money to Judge Prindle with the note; he put the money in the drawer; Mr. Ray, after making out the statement, wrote me a receipt for the twenty dollars, and handed it to me."

The evidence of this man Ray himself, though he elsewhere denies it, or denies his relation as clerk, is, it seems to me, perfectly conclusive upon this question of his clerkship. I call your attention to page 624:

"After I was admitted I spoke about going away; Judge Prindle told me that I could remain there; that it would be a convenience to the public to have an attorney there at the surrogate's office, and that, if I desired to, I could remain there; I could stay there; all that I ever did in regard to the business connected with the surrogate's office was this: when people came there to have business transacted, and the papers were not drawn, I almost always—not

always, but almost always—would draw their papers, and enter the orders in the books, and pass the books to Judge Prindle, who would sign the orders in the books; and in regard to the business that was done when Judge Prindle was away, I never did business in his absence, except he would be gone two or three days, and he would then say to me, 'if any one comes here with their papers drawn, and want letters of administration, or letters of guardianship, or want citations to prove wills, I have left them signed, and you can let them have the citations, or the letters of administration, and put the return day on some days that I have marked in my book;' Judge Prindle always had, in a certain book that he kept, certain days put down for the proof of wills; and if a man came during his absence when he was to be away any length of time I would give them a citation that was left signed by Judge Prindle, and put the return day on one of those days marked in the book, and when he came I would give papers to him; that was a practice that I had with some attorneys; give them the citations signed, and let them take them home, and say to them, 'when you have a case, put in the day in your papers, and it will be all right.' I never issued any letters of guardianship or administration, or any citations when Judge Prindle was in the village without going to him or seeing him; sometimes he would say to me, 'I can't go to the office, and you may go back and let them have their citations;' during the time that I was in the office after I was admitted, Judge Prindle had several students at various times; he never had a good writer; he never had a student who was a good penman until Mr. Thomas came into the office in the spring of 1870, I think it was; these students that he had, Judge Prindle used to have record the wills, *but they would make such bungling work, and Judge Prindle had a good deal of pride about it, and I saw that it worried him, and whenever I had time, and he had any work that was to be nicely done, I would take hold and help about the recording of wills*," *etc.*

And again, I refer you to page 791:

"Q. State what you had authority to do in the absence of Judge Prindle? A. In the absence of Judge Prindle, when he went away and staid away any length of time — I never had any authority to do any thing when he was in town, or simply gone for an hour or two — but when he was going to be gone a whole day, or two or three days, I had authority, that if a man came there with his papers drawn, or if he came there without them drawn and I drew the papers, I had authority to issue letters of administration, and to issue citations to prove wills."

Again, at page 787, speaking of drawing the papers for Mr. Humphrey, or, rather, on his account, he says: "I went to work on his account and figured it all out and he came over on the day of the final settlement, and I figured up the matter and drew his account; I made a statement of it; he said he wanted a statement of the accounts and the amount due, etc., to show to those interested; and I made one out; *I signed Judge Prindle's name to it;* I forget whether Judge Prindle was in the surrogate's office or at his house, but he was around somewhere; when I got the statement made out I signed his name to it, either by me, or else didn't say any thing about that, but I intended it should show to those interested that it came from the surrogate's office, and was correct; the amount I paid Mr. Humphrey, on the final settlement, was not $40, but was $30."

Mr. E. H. PRINDLE — The amount Humphrey paid him.

Mr. STANTON — Yes, I suppose so; it is a mistake in the case; it means the amount Mr. Humphrey paid him. Here Mr. Ray testifies himself at page 700:

"Q. How many of the letters testamentary have you recorded during that time? A. I have recorded since the time I was admitted up until last September; I have recorded of letters testamentary about two-thirds; of the letters of administration a little more than half."

This is his own admission. How can we by any possibility show the clerkship of this Mr. Ray, by stronger proof than that to which I call your attention? Why, he is continually performing these duties for the respondent. The respondent has nobody else around on whom he relies to do them, and in his absence he attends to the respondent's business. What constitutes a clerk? Is it not the performance of clerical work in his office? Does not that make a clerk of a man? Does not that establish the relation which the law prohibits when it declares that the clerk shall not practice before a judicial officer? A clerk of the officer himself? Besides these references which I have made, the case is full of proof which bears more or less upon this point. And I have dwelt thus long upon citing your attention to the proofs upon this point, because I have regarded this as a material point, and a very material point in the case on the part of the prosecution, for when the point is established that this Mr. Ray was doing the clerical work of this respondent; that he was actually a clerk in his office, then the other charges which are made here appear in a light so clear and so forcible, that we will have no hesitation and no need to dwell long upon them.

As to the third proposition embodied in this second charge: "That he knew Ray intended to charge the parties for his work," is not denied by the respondent. Indeed, it is his only defense for charging fees in the numerous instances proven, that he did not do it for himself, but for Ray, to whom he claims to have paid most of the money paid to him personally. That he knew Ray intended to charge enough to pay himself for his services and to remunerate himself in that way for the clerical work he did for the respondent himself, is apparent, for Ray himself swears (page 791):

"Q. Did you ever have a dollar of the money drawn from the county as clerk hire, paid you? A. I don't know, sir; I had money from Judge Prindle before I was admitted.

Q. Before you were admitted to the bar? A. Yes, sir; a good deal of it; he paid me for writing; where he got it I don't know.

Q. Since you were admitted to the bar, in the fall of 1867, you have not received any? A. No, sir."

Thus testifying that he had never received any thing for the clerical work which he performed except this privilege which he had of transacting this business in the surrogate's office, and acting, if you please, as attorney at law to the surrogate. At the bottom of page 792 he says:

"Q. Then you never got a cent of pay for this clerical work that you did, except as you charged parties who came in there to transact business with the surrogate, for your services? A. I got my office rent, and I warmed by the same fire.

Q. I ask you if you got any other pay except your office rent and the use of the office, if you got any other pay than that except what you obtained by charging parties who came into the surrogate's office for your services? A. For my clerical duties do you mean?

Q. Yes, for your clerical work for Judge Prindle? A. Well, I desire to explain.

Q. Answer my question? A. Well, you put your question in such a way that if I should answer it 'No,' you would make me substantially swear that in charging my bills for those services, I charged them for performing these clerical duties; which is not the fact.

Q. You never charged anybody for performing these clerical duties? A. Never, sir, one cent; any man that had his papers drawn never paid me a cent for it.

Q. Then you never got any other pay for this clerical work that you did for Judge Prindle than your use of the office, and the

opportunities you had for transacting business there as an attorney at law? A. That is all."

The fourth proposition under the charge that the respondent aided Ray in making charges for the work which he ought himself to perform free of charge, and thus defeat the view and intent of the act abolishing fees, is self-evident, and requires no argument; provided only that we assume that it is the duty of the surrogate to draw the papers and see that the necessary papers are drawn for granting letters; a proposition which I propose to argue under the fourth charge, to which it more particularly relates. Establishing these propositions, may we not assume that the second charge is substantially proven?

The substance of the third charge is similar to the second. This, however, instead of alleging the sending of parties to Ray to have the surrogate's own work done, knowing he was to charge them for it, it alleges the appointment of Ray as guardian *ad litem* of infants in cases where he knew he was employed by the parties interested adversely to the infants, and requiring the executors to pay Ray, as such guardian, as a further means of remunerating Ray for the services he rendered the respondent. We have presented no direct proof, under this charge, but we are not wanting in evidence introduced by the respondent himself, in that famous paper (Exhibit 45, page 724) the respondent's certificate of character, his right-bower as a campaign document, gotten up privately by his counsel, who chose the right time for their work, if we are to take the evidence of their witness, Mr. Plumb (pages 870, 871), and really framed by Ray, as Plumb thinks (page 870); and there is no evidence showing who did if he did not. In this document, which they insisted in putting in evidence, we find at page 725:

"As to the charge that 'May 15, 1871, Henry Holmes, Columbus, paid for proving the will of Loomis Richen, $25," we find that the will of Loomis Richen was proved at the time stated. Mr. Ray drew the petitions for the proof of the same, made the copies of the citations for service, proofs of service, copy of will attached to probate, etc., and attended to the probate of the same. Mr. Ray was also the special guardian of an infant in the matter; he used stamps to the amount of $4.15, and received from Mr. Holmes the sum of $25 for his services and the stamps."

Now that is direct proof under the charge which we make; he is employed, or acts, at least, for the executor, drawing up his petitions and proof and attending to his part of the business, and yet is at the

same time appointed special guardian of an infant who must necessarily have been interested adversely to the executor. The relations of the parties are such that their interests must be adverse, for the guardian *ad litem*, appointed by the court, is appointed for the express purpose of seeing that the executor, himself the other party in the case, does not injure or take advantage of the rights of the infant. At page 726:

"As to the charge that 'Thomas Clark, as executor of Reeve Dilley, of New Berlin, was charged $100; he paid $70; he employed no attorney, and there was no contest,' we find that Mr. Ray drew all the papers and paid all the disbursements. There were over sixty persons, upon whom citation had to be served. The publication fee was $24.57. The stamps, $7.80. He went personally to Cortland and served citation on a portion of the heirs, his livery bill for the trip being $4. He acted as special guardian for several infants, on proof of the will. The papers he drew were necessarily very voluminous, and he charged $100, of which he has received $70; we think the charges for his services, in this case, quite moderate, considering the amount of work involved."

It seems to us that these statements, in connection with the proofs to which I have already alluded in my remarks upon the second charge, establish this third charge.

The substance of the fourth charge is that since the 1st of January last he has willfully declined to perform his proper duties in seeing that papers were drawn up for parties in the transaction of their surrogate's business. The learned counsel for the respondent, in opening for the defense, says, at page 659, commencing at the bottom of page 658: "The act contained in the Session Laws of 1844, page 445, chapter 300, is the last act which we find upon the statute books in relation to the fees of surrogates. That act was passed when surrogates received a compensation for their services through and by fees, and that alone; and yet I think the Senate will agree with me, before I get through, that there is nothing in that act which makes it obligatory upon the surrogate to draw any of these papers which are specified in the act, except certain specified papers which could only be done as official acts. Now, the first section of this act repeals section 32 of title 3, of chapter 10, part 3, of the Revised Statutes. The second section of the act read as follows: 'For the following services, hereafter done or performed by surrogates, the following fees shall be allowed, nor shall they be entitled to receive any other fees therefor;' and then comes a long list of paragraphs denoting the various fees. Now, then, where is the

language in that section which makes it obligatory upon the surrogate to draw any of these papers? Why, when this act was passed, as I have said, it was the means through and by which the surrogate received his compensation for services, and the Legislature at that time did not deem it, as I take it, proper or necessary to incorporate into the act any words making it the especial duty of the surrogate to do or perform these services. If he drew the various papers, the statute fixed the compensation he should receive; and if he did not draw them, then he did not draw the compensation provided for by the statute."

We acquiesce in this position of the counsel so far as it assumes that there was no clause in that statute which specially declared it the duty of the surrogate to perform these duties. Its defect in this respect had not then become apparent, for the reason stated by the counsel, that it was the means through which and from which he derived his support from his office; but that it was expected that he would cause these duties to be performed is apparent, from the fact that fees for each of these services were provided, by law, for him to charge, and beyond which he should not charge. But after the passage of this act, the new Constitution of 1846 was adopted. It contained the following, article sixth, section twenty: "No judicial officer, except justices of the peace, shall secure to his own use any fees or perquisites of office." From and after the adoption of this Constitution, surrogates were paid a salary, and the stimulus of fees, to be received as his only source of income from his office, no longer existed. The county (when it could get them) took the fees actually charged, and if the surrogate became careless in collecting—if he failed in requiring fees in advance, and also in performing the duties for which fees were provided, he nevertheless obtained his salary the same. But the people who paid the salary might thus be compelled, for the want of some mandatory clause in the statute, to hire attorneys to draw their papers, if it should be said that the statute itself fixing the fees did not imply that it was his duty to draw these papers for which the fees were given, in order to remedy this evil, and correct this defect of the statute, if defect it was. Another act was passed for the adoption of the statute, in 1847. (Chap. 277, § 9 of the Laws of 1847.) The act, referring to surrogates, among other officers, uses this language:

Sec. 9, chap. 277, Laws of 1847 (vol. 1, page 313), as amended by chap. 95, Laws of 1849 (page 135), (and see, also, page 904, vol. 1, R. S., Banks' 5th ed.) provides that "such county officers (sur-

rogates, etc.), shall in no case perform any official services, unless upon pre-payment of the fees and perquisites imposed by law upon any person for services rendered by such officer in his official capacity; and, upon such payment, *it shall be the duty of any officer to perform the services required.* They shall also pay over all sums so received by them for such fees and perquisites, after deducting their salaries to the treasurers of the respective counties, on the first Monday of May and November of each year; also, to render an account, giving each item of fees received by their affidavit, to the board of supervisors, at their annual meeting of each year."

When the stimulus of fees, to be received by an officer for his own individual use, was no longer existing, and he obtained a salary which he received whether he performed, faithfully, his duty or not, it became necessary, in order that the county might receive the money to which they were entitled, and that the surrogate might be compelled to perform the official services for which fees had been provided, it became necessary to pass this mandatory act; and what language could be used stronger by the Legislature in framing the act, or should indicate that they intended it should be the imperative duty of the officer to perform the services when paid the necessary fees? It seems to me this is too plain for argument. Clearly this act makes it the duty of the surrogate to perform every duty for which the surrogates ever had been provided by the law of 1844. But the counsel tells us it cannot be so, because the surrogate might sometimes be put to more expense than his fees would amount to in procuring the translation of a will. Is it any excuse for a constable to refuse to serve a process because it will cost him more than it will come to? It has been decided twice and again not to be. And we know of cases where a constable has lost money on some specially laborious case, but he makes it up in others. All general laws, in their enforcement, occasion individual instances of hardship, but the officer, if he finds it too hard, may resign at will, and that ends all further official obligation. The counsel further says at page 660:

"The Legislature should make it an official duty; and if, as is claimed, and doubtless will be claimed in this matter, it is an official service, then I say that nobody else can perform it; for I understand it to be the rule that where the statute prescribes a duty upon a man as an official service or duty, that service must be performed by him in person, and cannot be performed by any other person."

Where, may I ask you, does he find this document as to the administrative duties of judicial officers, a class of official duties clearly distinguished by the courts from those acts termed judicial;

the same distinction drawing the line of personal responsibility for errors on the part of the officer? May not a surrogate have a clerk enter an order in his books? Is there any doubt about this being an official duty, too? May not a justice of the peace, whose official duty it is to draw and issue a summons, let any one else write it, and simply sign his name to it? What is a surrogate given a clerk for but to do some part of his official work?

Again, the counsel claims that these duties are not official, and attempt to draw a distinction by looking to definition which is entirely too fine for comprehension. He says (pages 661 and 662):

"Webster's definition of 'official:' '1st. Pertaining to an officer of public trust. 2d. Derived from the proper office or officer, or from the proper authority; made or communicated by virtue of authority; officially; by the proper officer; by virtue of the proper authority; in pursuance of the special powers vested.' Now, we say, under this definition of the word 'official,' and its use in the statute, of course as it is understood in common language, and in the ordinary course of life, that these duties, these clerical duties, drawing papers and all that sort of thing, was not intended by the Legislature to be a part of the duties of the surrogate. If so, he becomes the adviser of every man, woman and child in all business in his county. If, by virtue of this statute, these parties are to resort to him, and he is compelled to discharge the duties detailed in this statute of 1844, which are subsequently confirmed by the acts of 1847 and 1849, in relation to the fees which he may receive, in what position is he placed? Why, I may go to the surrogate of our county with a will in my pocket; I know that it is to be contested; I know that it is to be a terrible contest; that the parties mean to fight it to the bitter end; I go to the surrogate for drawing the papers for the proof of this will to bring the matter before him, and in doing that I make a statement to him of the case, without his knowing that there is to be any contest, and without his knowing that I have any suspicions that there is any thing wrong, or that there is any claim that there is any wrong, and I give to the surrogate a full statement of my views and ideas, and what I supposed to be the facts existing in relation to the will; he gets them and forms an opinion. None of us, after the statement of a case is made to us, under any circumstances, would do otherwise than form some conclusion, some opinion in relation to its merits.

He goes on and draws the papers, makes the citation, and finally on the return of the citation for proof of the will he finds that there is to be a contest. Does the surrogate stand entirely as he should,

disinterested between the parties? And yet this idea that he is compelled to draw these papers, that he is the clerk of all the parties who choose to resort to him in the county who may have surrogate business before him, brings him into precisely this position which I have stated, or may bring him into that position every little while; it would seem to be wrong in principle that the surrogate should be made the adviser of all parties under those circumstances, and such a construction should not be given to the statute which will lead to such wrongs, if a construction may be given to it equally in accordance with this language, and which prevents such a state of things."

Now, then, the papers which we claim it is the official duties of the surrogate to cause to be drawn, for which he is given a clerk in part; a clerk whose salary is paid by the county, are purely formal. It is no more necessary that the party should state to the surrogate the facts which may be involved in a future contest than for the party to state the same facts on applying to a justice of the peace for a summons. But even if the position of the counsel were true that he must have heard one side in advance; if he must have formed an opinion which would render him no longer impartial, he must be an officer peculiarly well fitted for judicial duties. But it is said there is an inconsistency in requiring these duties of a surrogate; that he is purely a judicial officer. Is there an inconsistency in requiring a judicial officer with criminal jurisdiction to frame an issue a warrant upon the sufficiency of which he may be required to pass judicially? Perhaps it is; but if so, our statutes are full of inconsistencies of this kind, and the greatest inconsistencies are imposed upon our justices of the peace. Neither are United States statutes or officials exempt. Suppose a defect is discovered in a petition for the proof of a will drawn by a surrogate, who can take advantage of that? As soon as discovered, it is to be amended; that is all. A will is not to be defeated, no letters of administration refused, for any such reason as that.

The statute is clear and direct. The term when, and circumstances under which it was passed, reveal the object and interest of the law too clearly for doubt. Suppose it really a doubtful question, is it commendable for public officers on doubtful questions to decide in their own favor, and against the interest of the people who employ and pay them? Does this comply with the oath of office, to do the duties of the office to the best of his ability?

We think that if there was really any doubt about this question, any officer who faithfully performs his duty will give the benefit of the doubt to the county who employs and pays him a salary, and

not take the benefit of all doubts to himself under circumstances which will tend to increase the emoluments of his office and put money in his pocket.

Having established, as I think, the proposition that it is the duty of the surrogate to draw those papers and perform those duties for which a specific fee is established in the fee bill, I will now read some portion of that act which prescribes this.

Chapter 300, Laws of 1844, page 445, and see the same law in vol. 3, R. S. (Banks' 5th ed.), pages 919 to 922; also, vol. 4 Statutes at Large (Edmonds' ed.), page 694 to 697, provides that:

"For drawing and recording all necessary papers, and drawing and entering all necessary orders on applications for letters of administration, when not contested, and for all services necessary to complete the appointment of administrators, and for the appointment of appraisers, five dollars; but in cases where a citation is necessary, seventy-five cents in addition.

"For drawing and recording all necessary petitions, depositions, affidavits, citations, and other papers, and for drawing and entering all necessary orders and decrees, administering oaths, *appointing guardians ad litem*, and appointing appraisers, and for rendering every other necessary service in cases of proof of will and issuing letters testamentary, when not contested, and the will does not exceed fifteen folios, surrogates shall receive twelve dollars; and when the will exceeds fifteen folios, ten cents per folio for recording such excess and six cents per folio for the copy of such excess to be annexed to the letters testamentary.

"Appointing a guardian to defend any infant who shall be a party to any proceeding, fifty cents; but where there is more than one minor of the same family, and the same guardian is appointed for all, twenty-five cents for each additional minor; *and no greater or other fee shall be charged for any service in relation to such appointment.*"

The same act provided fees for every act under these laws, defining the duties of surrogates, and providing the fees to be collected by them for the use of the county. They acted up to the passage of the act of 1867. These two acts up to that time, and enforced together, one which provides these fees, and the one which says, upon being paid these fees it shall be the duty of the officer to perform the services required — that is, the statute of 1847, from 1847 up to 1867 — these two acts were enforced together. Now then comes the act of 1867, section 16 of chapter 782 of the Laws of 1867. It says this: "From and after the passage of this act, no surrogate

shall charge or receive any fee or compensation for any official services performed by him."

Mr. MYGATT — There is no repeal of the former act anywhere?

Mr. STANTON — No statute repeal. No further than these words are necessarily repealed by that statute. As I before stated previous to this, the duties were well defined by this fee bill, and by the statute which made the performance of those duties for which fees were received imperative upon the surrogate. Will any one claim that this act repeals those laws as to the duties which he was bound to perform? Does it go any further than simply to take away the fees which he was bound to charge for doing these duties? Does it abolish the duties? Does it in any way do away with the official obligation to perform the same services which he had theretofore ever been required to perform, except simply the question as to fees? It seems to me clearly not. Clearly the object of this law is to make the administration of estates as inexpensive as possible. That really the respondent himself, and the respondent's counsel, believe that the position we take here is the true one, is indicated, it seems to me, by their own evidence and the reform which they took the liberty of proving that he had instituted in his office since the first day of January last; I call your attention to page 754 of the case, part of the evidence of Mr. Ray:

"Q. When the question was raised as to your right to do business there, you ceased? A. Yes, sir; only to close up some matters I had on hand.

Q. Have you had your office there since the first of January? A. No, sir.

Q. Or done any business there, except as an attorney? A. No, sir; except as an attorney going there from my office where I am now located.

Q. Has there been any attorney in the office during the present term? A. No, sir; not making that his office or stopping there.

Q. Do you know who was appointed clerk? A. Yes, sir; George Thomas.

Q. He is not a lawyer? A. No, sir.

Q. You understood that nothing since then has been charged for the papers drawn in the office? A. I understand nothing."

Proof of the respondent himself, showing that since the first day of January last he has been practicing upon the same rule which we claim is the rule of law and the duty of this respondent, drawing the papers without charging any thing for them.

He takes the trouble to prove it here before this Senate. So much for the law as to the duty of the respondent in drawing the papers necessary for the granting of letters. I now call your attention to the proofs under this fourth charge, sustaining the charge. Mr. Martin, at pages 489 and 490, says:

"Q. Have you stated the precise time? A. Not the precise day; it was some time in the month of February last, I think.

By Mr. STANTON:

Q. Did you see Judge Prindle there? A. Yes, sir.

Q. State what occurred at that time? A. I asked Judge Prindle to draw the petition.

Q. The petition for proof of the will? A. Yes, sir.

Q. What did he say? A. He said he would furnish a blank and I might draw it; I told him I didn't know any thing about such business; that I didn't know as I had ever seen one; that it was not my business, and that I would rather he would do it. He insisted upon my doing it, and I finally took the blank, and went down and drew a petition, and brought it back and presented it to him; says he, 'It ain't right;' I told him I didn't expect it would be.

Q. In what respect did he say it was not right? A. The residence of one of the heirs who lived out of the State was not mentioned; the town I think it was, that was not mentioned.

Q. State the conversation that occurred? A. I asked him then if he would not draw one; I said to him, 'it won't take you five minutes, and I will pay you what is right;' he didn't make, as I remember, any particular reply.

Q. Did he draw it, or offer to draw it? A. He did not.

Q. Did he offer to have his clerk draw it? A. He didn't; I told him that I guessed I could find a man that would draw it.

Q. What did he say to that? A. I don't know as he made any particular reply; I took a blank and went and got Judge Mason to draw the papers.

Cross-examination by Mr. GLOVER:

Q. Have you stated all that Judge Prindle said to you there? A. I presume not, sir.

Q. Did he tell you that since this trouble and fuss he had nobody there to draw papers? A. I don't remember that he did make any such statement.

Q. Simply declined to draw the paper for you? A. He did."

Now, then, the respondent himself testifies at the bottom of page 894, referring to Mr. Ray:

"Q. You had him go, out of deference to the public sentiment? A. It was mainly that; it would have been a convenience, and when people come there now they complain about his being away, and I tell them that I have nobody there to draw papers and they must go to the lawyers and get the business done; I don't want to subject myself to any further complaint in regard to it.

Q. Since the first of January you have declined, in various cases, to do necessary work or cause it to be done for the granting of letters? A. I have declined to draw petitions, and this business I consider is the duty of a lawyer to do.

Q. In how many cases have you declined to do that since the first of January? A. I don't remember but two; I did not decline absolutely, but I stated the fact that we had a different order of things since election, and things were going to be done there so that nobody could complain."

That is all of the proofs to which I call your attention of the fourth charge. The substance of the fifth charge is, that he suffered himself, in 1869, to be employed by the executor over whose accounts he had jurisdiction, and as attorney brought a suit for him in the Supreme Court, and that he charged an exorbitant fee for his services, and took it out of the estate, auditing his own bill in the executor's accounts. Under this charge I call your attention first—

Senator MURPHY—Are you going to go through all the charges, this way? Are there any to be examined, because it is evidently a thirty-hour speech if you're going to take half an hour to each charge?

Senator BENEDICT—What charges were examined?

Mr. STANTON—There was something like eight if I recollect right. The most of these charges I propose to pass over very rapidly. I have given more particularity to these charges heretofore, because I regarded them as involving questions that affect nearly all the other charges.

Mr. MYGATT—There are thirty-four on the record and you propose to make about eight?

Mr. STANTON—As proof under the fifth charge I call your attention first to page 346 of the case:

"I went to Norwich the 8th of November, 1868, and petitioned to have the will proved.

Q. To what officer? A. I went to Judge Prindle.

Q. Go on and state the interview you had with him? A. I went

to Judge Prindle and told him I had a will left for me to execute, and wanted to have it proven, wanted to get the citation, and he said Mr. Ray would fill them out for me; Mr. Ray was in the office, and so he filled out the citation for the proof of the will; set a day (the 12th of February, 1869) for the proof of the will; went down there at the time with the witness to the will, and it was admitted to probate at that time; when he read the will he said that he had no power to sell the real estate; no power given me in the will to sell the real estate, and I asked him what course I should pursue to sell it; he said there was no legal way he knew of without it was to get a decree from the Supreme Court; I asked him how much he thought it would cost; he said it was costly business to take a suit in the Supreme Court, and he said thought perhaps it might cost $100; I told him that one of the heirs was dissatisfied with the will, and it wasn't as she expected, and I wished to go in a legal manner so that there would be no come back, and I had a chance, I told him, to sell the real estate, and he said there wouldn't be no trouble but what I could get a decree from the Supreme Court, and I could make a contract for the real estate, and I did make a contract, and the man took possession the first of April, or the woman that I sold to; it was a woman it was going to; I suppose he went on and got the decree from the Supreme Court.

Q. Look at that paper for a moment which I show you, and see if that is the certificate of probate with a certified copy of the will that you received in that case? A. Yes, sir, that is one.

Q. You say you told him to go on and bring suit to sell the real estate? A. Yes, sir; I told him if that was the only legal way to do it, that I wished to go legally, and to go on and do it.

Q. When was the next time that you had an interview with Judge Prindle in reference to this matter? A. The next time after the will was admitted to probate was in the fall of '69 when I went to pay him the money; he wrote me a letter the latter part of October.

Q. Is that the letter that I show you? A. Yes, sir; it is dated October 13, 1869, and it stated in the letter — I haven't read the letter over lately.

Q. Read it. A. 'Dear sir. I send you deed from yourself as executor to Betsey Page. You will simply sign your name on the line opposite the seal; cancel the stamp and go before a justice or notary public and acknowledge the execution of the deed, and receive the money. The judgment directs you to pay to me the sum of $350, the costs and expenses of the suit.

I wish you would send me the amount the first opportunity you have, and much oblige

Truly yours,
H. G. PRINDLE.'"

At page 352 he swears to the amount that he paid Mr. Ray upon the settlement of the estate.

"Q. State what language he used that you recollect? A. The language he used, that the account that Ray brought in was rather more than that left of the estate; the account was some fifty-eight dollars and some cents, I think, and I paid him fifty dollars; I told him there was about forty dollars left of the estate; if I had my fees that he had made out to me, that there was about forty dollars left; and I says I will pay you fifty dollars if that will be satisfactory; Judge Prindle said he would make it all right with Mr. Ray, and so I paid him fifty dollars on the final settlement.

Q. Had you ever employed Ray as an attorney in any way previous to that time? A. I hadn't employed Ray at all; when I went there for the citations to the proof of the will, I told Judge Prindle that I came there to get the will proved, and he said Ray would fill out the papers; I think Judge Prindle never did any writing without signing his name, except the receipt he gave me for $350 himself."

At page 825 of the case appears in evidence the final audit which was made by Judge Prindle of this matter. It is a part of the final account which was put in evidence:

"Cash paid H. G. Prindle, Esq., attorney and counselor, expense of obtaining order and decree in Supreme Court for sale of real estate, $350; Cash paid G. W. Ray for services and expenses, proving will and final settlement, for stamps, publication in the State paper, and Telegraph and Chronicle, and for notice to creditors, $37.50."

I know the final account shows a payment to Mr. Ray of $37.50, and of it is sworn to by the executor, but that does not necessarily show that Mr. Barrows is mistaken when he swears he paid Ray $50 on the final settlement. Mr. Barrows testified at page 352, "about $40." This $37.50 is about $40, and it is all that is left of the estate. Mr. Barrows says he paid him the difference between the balance of the estate and the $50; he paid him out of his own pocket. Had that difference been put into the account, it would not have balanced, and it could not have been put upon the other side truthfully, as he never received it on account of the estate. I incline to believe Barrows rather than Ray, for first he is not interested in this pro-

ceeding so intensely as Mr. Ray, and besides, being a perfectly reliable and trustworthy man, he is not contradicted flatly by quite so many witnesses in other material respects.

The judgment in the action was had upon the answer and a stipulation (page 365).

"SUPREME COURT—CHENANGO COUNTY.

AUSTIN BARROWS, executor and legatee under the last will and testament of Anna W. Barrows, deceased,
against
ELEANOR P. HIGGINS, DELIA HUNT, AUGUSTA MATTERSON, MARGARET STORRS, SAMUEL H. STORRS, SARAH WILLIAMS, GARDNER BARROWS, LATHROP H. BARROWS, AVERY T. BARROWS, CORNELIA C. BARTLETT, THE CONGREGATIONAL CHURCH OF COLUMBUS, CHENANGO COUNTY, N. Y., THE AMERICAN BOARD OF COMMISSIONERS OF FOREIGN MISSIONS, THE AMERICAN BIBLE SOCIETY, founded in New York in the year 1816, and THE AMERICAN HOME MISSIONARY SOCIETY, founded in the city of New York in the year 1826, legatees under the last will and testament of Anna W. Barrows, deceased.

The defendants above named answer the complaint of the plaintiff in the above action, and admit that the same is true, and each and every allegation therein contained, and these defendants hereby consent that the plaintiff have the relief and judgment demanded in said complaint.

GEORGE W. RAY
Attorney for Defendant."

And there is a stipulation on page 366 to the effect that the plaintiff may procure an order at the special term in Otsego county.

I am not aware of any defense that the respondent makes to this charge, except he claims that the amount of costs were fixed by Judge Boardman. We will read his evidence upon that point.

I call your attention to the evidence very briefly of Judge Boardman, at page 609. It was before Judge Boardman that this order was obtained:

"Q. Can you state whether if any of that kind of proceedings were had, your attention was called to the fact that Judge Prindle, as attorney for the plaintiff, had issued letters upon the estate of Mrs. Barrows to the plaintiff in the action—he as surrogate? A. Well, I can't say that I have any memory of that particular case; I can say, however, that I have no recollection that any such occurrence ever has occurred as that my attention was called to; the fact of a surrogate acting in a case in behalf of an executor; I have no recollection

that I ever knew of such a case being presented to me, or my attention being called to it.

Q. Can you state whether you ever looked at the order? A. It is not at all probable that I did; it was an order entered on a stipulation, and it would be very extraordinary if I stopped to look at it when both parties were represented by attorneys and stipulated."

Again, at page 614, he says, in answer to a question of Mr. Lewis, senator:

"Q. Judge, do you base your judgment from the fact that you know there is a statute against it? A. Because the statute regulates the fees and allowances, and that does not seem to be in accordance with any statute regulating fees and allowances in such cases."

That is speaking of the $250. Then at page 615, which I have already read. I know the order says (page 367): "that out of the proceeds of said sale the plaintiff, as such executor aforesaid, pay the costs, charges and expenses of this suit and of said sale; the whole of which is not to exceed the sum of $350."

Mr. MYGATT—That is the judgment?

Mr. STANTON—That is the order obtained at the special term, to which Judge Boardman alluded when he testified, as I have already said, that his attention could not have been called to it, that he regarded the attorneys capable of taking care of their own interests. But it appears that the order was in the judge's own handwriting, and even if Judge Boardman had had his attention particularly called to this order he would have had a right to assume, and suppose of course, he would have taxed the costs as the Code requires, or without conforming the amount to the tax bill of costs he frames the judgment in this way (page 368):

"That out of the proceeds of said sale the said plaintiff, as such executor as aforesaid, pay to H. G. Prindle, the attorney for the plaintiff, the sum of $350, the costs, charges and expenses of this suit, etc., and that said plaintiff, as such executor as aforesaid, pay over and distribute the balance of the proceeds of said sale according to the provisions of the last will and testament of the said Anna W. Barrows, deceased."

Requiring entering the judgment to pay the $350 to him absolutely, and that too without taxing the costs in any way. The value of the property was $1,000.

Mr. PRINDLE—The estate was $3,000.

Mr. STANTON—The value upon which these costs for any additional allowance was to be fixed was upon the amount for which the real estate was to be sold; and proof in that respect shows that it

sold for $1,000. Section 307 of the Code fixing allowances. It is familiar to the lawyers of the Senate. It provides for the adjudication upon a will an additional allowance may be made, etc., but this is not even an adjudication upon a will, and does not come within the terms of the Code as to that provision, for there was no contest over the will, over its provisions, over its construction, or even its meaning or legal effect. It was simply an application to the court for authority to the executor to sell the real estate, there being no authority of this kind given by the will itself.

Senator PERRY—Does your objection to this go to the amount of the allowance?

Mr. STANTON—Yes, sir.

Senator PERRY—If the allowance had been $50, would you have had any objection to this?

Mr. STANTON—Certainly, sir; in the first place he had no business to appear as an attorney at all.

Senator PERRY—I understand your position is that the amount of the allowance does not have any bearing upon it?

Mr. STANTON—The amount of the allowance has this bearing, that he obtained $350 out of the estate while he was surrogate, and had the estate under his control, and by the law was bound to see that it was protected.

Senator PERRY—That allowance was made by the order of the Supreme Court, was it not?

Mr. STANTON—By the order obtained by him upon the stipulation with his clerk the judge granted that. Testifying that his attention never could have been called to it; that it was not his practice to look over an order upon a stipulation of the attorneys on each side, for he regarded that the attorneys on each side would protect the interests of their clients. I show this to show how the order was obtained from the Supreme Court.

Senator BOWEN—There is no evidence of any malpractice of any order.

Mr. STANTON—It seems to me it is malpractice to get an order which is perfectly unjustified or unlawful. If the order assumes to grant $350, it is certainly unlawful.

Mr. PRINDLE—We shall have occasion to dispute that.

Mr. STANTON—In the first place, we take the ground that he had no authority to be employed by parties, either for or against any executor, administrator, guardian or minor, in any civil action over whose accounts he could have any jurisdiction at law.

Senator MURPHY—What is the reference?

Mr. STANTON — That is the second Revised Statutes, page 223. Fifth edition, Revised Statutes, page 367.

Senator BENEDICT — What is the page of the act?

Mr. STANTON — This, that I am reading from, is Dayton on Surrogates. I have no further citations than simply the Revised Statutes. It is the fifth edition of the Revised Statutes, page 367, section 28. I will read this statute again: "No counsel, solicitor or attorney for or against any executor, administrator, guardian or minor, in any civil action over whom or whose accounts he could have any jurisdiction by law." In this case, we show that he granted letters testamentary to Mr. Barrows upon the estate of Anna Barrows, and very soon after that, in defiance of this statute, he suffers himself to be employed by Mr. Barrows as an attorney to bring an action in the Supreme Court for the purpose of getting authority to sell the real estate for the payment of the legacies. This is the action to which we have reference, in which this order is obtained in the manner which we have shown it was obtained before Judge Boardman. At his request his own clerk, as we claim Mr. Ray, appears as attorney for the defendants in the suit, and the judgment, or order rather, is obtained upon the stipulation entered into between these two parties.

Senator BENEDICT — Between Judge Prindle and Mr. Ray?

Mr. STANTON — Between Judge Prindle and Ray. The stipulation to which I have already called your attention, at page 365 of the case, signed by H. G. Prindle, and G. W. Ray, defendant's attorney. I say that this action was not an adjudication upon the will and does not come within the terms of the section of the Code, giving an additional allowance. There was no contest or question over the construction of the will, nor is the action brought for that purpose. There is no basis for the additional allowance, and the amount of costs properly taxable, were as follows:

Proceeding before notice of trial	$25 00
Thirteen additional defendants	23 00
Total	$48 00

Disbursements, clerk's fees, $1; postage, say $1; or $2.

There was no sheriff's fees, as there was no service of process upon any of the defendants. Ray appeared for all of them. Even if it could be claimed as an adjudication upon the will, and, there-

fore, that the plaintiff was entitled to an additional allowance under the Code, the amount of that would be on the $1,000 for which the property sold. Page 800 you will find the proof of the nature of the property sold at $1,000. That is the evidence of Mr. Ray himself.

Senator PERRY — There is no stipulation as to the amount of allowance, is there?

Mr. STANTON — Not at all. There is no stipulation, except Mr. Prindle, when he drew up the order, inserted this clause, that the executor would pay him this sum of $350. And, as the evidence shows, these papers are all in the handwriting of the respondent himself, that is, the order and the judgment; every thing, I think, except the answer and the stipulation, which is in Mr. Ray's hand writing.

Senator MURPHY — What order was it the judge drew?

Mr. STANTON — It is the order upon which the judgment was obtained, that was obtained from Judge Boardman, drawn by Judge Prindle, himself.

Senator MURPHY — Who testified on that ground?

Mr. STANTON — Judge Boardman testifies that his attention never could have been called to the order as contained in that clause in reference to the $350.

Senator MURPHY — What stipulation was it?

Mr. STANTON — I will read the stipulation at page 365, for the benefit of the senators:

"It is hereby stipulated that this action be heard at a circuit and special term of the Supreme Court to be held at the village of Cooperstown, in and for the county of Otsego, commencing on the 31st day of May, 1869, without further notice, and that the plaintiff have judgment for the relief demanded in the complaint in this action.

Dated *May* 29, 1869.

(Signed.) H. G. PRINDLE,
Plaintiff's Attorney.

(Signed.) G. W. RAY,
Defendant's Attorney."

Senator AMES — Any bill of costs follow in that case?

Mr. STANTON — No, sir; the evidence shows there was none taken and never has been. I say even if it could be claimed as an adjudi cation upon the will, and, therefore, that the plaintiff was entitled to

an additional allowance under the Code, the amount of that would be upon the $1,000, for which the property was sold, as follows:

Ten per cent upon the first $200	$20 00
Five per cent upon the next $400	20 00
Two per cent on the remaining $400	8 00
Making total additional allowance	$48 00

That added to the costs which I have already figured up would make altogether $96, assuming that it was a case where an additional allowance was proper, which, it seems to me, clearly is not. If the value of the property even had been $3,000, the entire value of the estate, personal and real, all the additional allowance could have been, would have been $60 instead of the $48 figured here. That would make $108; even if the property sold for $3,000; but the evidence shows it only sold for $1,000. These are all of the costs that could legally have been obtained in the action by the respondent, even though he had been properly and legally the attorney of the plaintiff; even though it was not out of the estate under his charge as surrogate, which he in his official position was bound to protect, and see it was not wasted either in attorney's fees or in any other manner.

Senator MURPHY — Let me interrupt you. Did Judge Boardman indorse this order, or order it to be entered?

Mr. STANTON — In form, it was taken at his term of court and certified by the clerk; that is in evidence.

Senator MURPHY — Presented to the judge?

Mr. STANTON — The judge had no recollection of it, and does not think that he could have had his attention called to the fact; that it was not his habit, practiced in his court to scrutinize the orders entered by attorneys where they were entered upon stipulation. That is the practice of all judges.

Senator BOWEN — Mr. Stanton, one question. Had he any jurisdiction over that question; was not he acting as an attorney of the Supreme Court instead of county judge; can there be any jurisdiction to review his action as attorney of the Supreme Court?

Mr. STANTON — It is a part, senator, of this transaction.

Senator BOWEN — Is not the whole thing, when he acted as counsel, in violation of the statutes; is not that as far as he can go?

Mr. PECKHAM — That brings up the whole question as to what power this Senate has to remove. It is conducting the official business of his court. We say that this Senate has placed itself on

record as holding that that is not the whole way, and the only ground upon which a person can be removed from office.

Senator BENEDICT — Have these accounts ever been settled in that estate?

Mr. STANTON — Yes, sir; the final account — I have already read a portion of the final account — that portion which shows that this respondent audited this sum, $360, as surrogate in the final account of this same executor. Audited this sum which he had charged him, and passing upon it then as being a correct and proper charge.

Senator D. P. WOOD — Mr. Stanton, does it appear anywhere here that this estate was necessarily sold; was it necessary to pay the debts?

Mr. STANTON — The will is in evidence here which shows the entire property was given in legacies.

Senator D. P. WOOD — In other words, was it necessary to convert this into personal preperty, to fetch it within the jurisdiction of the surrogate?

Mr. STANTON — The terms of the will, itself, will show you that the entire property was willed to certain persons and certain charitable societies, so much money, $200 to one; $100 to another, etc. Then there was a residuary clause in the will, which gave the remainder of all the property to the same religious societies. The evidence shows that the total value of the estate was sufficient simply to pay the legacies and pay this bill of over-charge, and pay Ray's bill into about ten dollars. His bill overran what was left of the estate, and the executor testifies he paid that ten dollars out of his own pocket. That was after the estate had been sold, and the whole of it applied to the payment of these legacies.

Senator BENEDICT — Was there any debts?

Mr. STANTON — That does not appear. How could the money be paid to these different societies, unless the estate should be sold? I regard it as a preliminary proceeding. He does not will his real estate to anybody; but simply wills so much money, and then wills the balance of all the estate to these religious societies.

Mr. MYGATT — There is no power given in the will to the executor to sell.

Mr. STANTON — There was no power given to the executor to sell the real estate, and that was what this action was brought for, to get that power and authority. If there had not been money enough to pay all the legacies, I presume that these societies would have taken the real estate, if they are authorized to take real estate directly, without any sale on the part of the executor. But it seems the

estate was not sufficient for that, and in order to pay the legacies, which were bequeathed, it was necessary to sell it.

Senator D. P. Wood — To carry out the provisions of the will?

Mr. Stanton — To carry out the provisions of the will. In this charge we have put the whole transactions together, in order that this Senate, in passing upon these questions, may see the whole transaction in the whole light; not only his employment, but his conduct in the Supreme Court in obtaining this order, as a means by which he takes out of his estate, under his own control, this sum of $350, in defiance of the law and without any authority whatever. We have shown the whole transaction, in order that you may have an entire view of the case. And we claim that these proceedings in the court, the manner in which it is conducted, is proper in connection with the other evidence to show the real character of this transaction; what the respondent did and how he did it; thereby enabling you the better to judge whether he is a competent and a fit man, by reason of this transaction among others, for the holding of the office which he now retains. I know in this case that there is one allegation in this charge that is not proven; and I call your attention to that. It is that allegation upon information and belief that he obtained Ray "then a clerk in the office of the surrogate, performing the duties of a clerk to said surrogate, being an attorney and counselor at law, to appear as an attorney in said action for each and all of the defendants, and as alleged upon information and belief, without authority from said defendants, or either of them, and upon a stipulation signed," etc. Mr. Ray testifies here, and produces upon the trial, evidence of his authority to appear for these defendants, many of them in the handwriting of the respondent himself. He thus testifies that he appeared therein upon the request of the respondent himself; but it seems evidently authority upon this charge on information and belief; otherwise it seems to me these charges are completely proven, and this I regard as not necessary to prove in order to fine the charge substantially proven. I will pass on to the sixth charge. The substance of this charge is that the respondent made a corrupt agreement with John Murphy, to use his influence to get the executor of his father's will to renounce, and that he took fifty dollars from Murphy upon the agreement, and also that he, through Ray, charged him eighty dollars fees on the proof of the will. I call your attention to the proofs of this charge first at page 380. He says: "The first business I had with him, the first time I ever saw him or spoke to him, was about how much an executor's fees

would be for settling an estate; he told me according to the size of the estate.

Q. Go right on, sir? A. Well, I don't know just exactly what after that I did say to him; I think I asked him after that if there was any chance to remove an executor, and he said no, there was no chance; so I believe I didn't say any more about it at that time; I believe I left him and went home; I came back again and saw him and was talking to him once after that and I asked him if he thought there could be any way got for removing an executor; he said no; no chance at all; then I asked him if he would have a talk with Dr. Dwight, and get him to resign his office and appoint it over to me; he said he would; I told him that I would pay him for his trouble if he would so.

Q. Was Dr. Dwight the executor of your father's will? A. Yes, sir; he was."

He further says (same page):

Q. Can you tell what day that was that the will was proved? A. It was on the 31st of March.

Q. What year? A. 1868, I think.

Q. Now, sir, go on and tell what further occurred at the time the will was proved? A. They came out there the day the will was proved and came before the judge, and they went in to have the will proved; they came out and Mr. Prindle told me that Dr. Dwight had made up his mind to resign and let me have the executorship; so he appointed me and gave me those papers.

Q. Go on and state now what occurred in reference to the money you paid and how much you paid? A. I paid Mr. Ray seventy-five dollars.

Q. What did you pay him that seventy-five dollars for? A. I suppose for proving of the will; I don't know for what else.

Q. Had you employed Mr. Ray in reference to the matter? A. I had not, sir; I employed Mr. Prindle; I did not employ Mr. Ray.

Q. Who was present at the time this money was paid; was Judge Prindle present? A. Judge Prindle was present when I paid the money to Mr. Ray."

Again, at page 384:

"I paid him fifty dollars for having a talk with Mr. Thomas Dwight, and for getting him to resign his executorship and appoint me in his place.

Q. When did you pay that? A. I paid that the same day.

Q. Before or after the giving of this receipt? A. After the giving of this receipt.

Q. Go on, state the circumstances; how you came to do it, and what was said between you and Prindle in reference to it? A. There was nothing said in reference to it; nothing further than I handed him the money and he said that it was a pretty lucky pop for me; if Dr. Dwight went on it would cost me a good deal more to have the will proved and the estate settled.

Q. Had there been a previous agreement between you and him as to how much you were to pay him in case he got Dr. Dwight to resign? A. Yes.

Q. When was that? A. That was before the proving of the will, sir.

Q. State what occurred? A. I told him if he would talk with Dr. Dwight and get him to resign the office, I would give him $50, and if Dr. Dwight wouldn't resign his office I wouldn't give him nothing.

Q. Where was that talk? A. At his office.

Q. About how long before the proof of the will? A. Oh, I guess it might have been a couple of weeks; I couldn't be certain; I didn't pay much attention to that to tell just how long before.

Q. Who was present at the time that talk was had; anybody besides you and Judge Prindle? A. Yes, sir; Mr. Ray was in there; there were several others in there on business.

Q. Do you know whether Mr. Ray heard the transaction? A. I couldn't tell you whether he did or not, but I guess not.

Q. In what part of the office was this talk, when you made this arrangement? A In the front part.

Q. Did you talk loudly, so that all could hear in the room, or low, so that no one could hear? A. We talked low.

Q. What part of the office were you at the time you paid this fifty dollars to Judge Prindle? A. I paid him that in the little room back of the office.

Q. How did you come to go in that little room? A. Well, I'll tell you just how; he told me he wanted I should pay him fifty dollars in there, so that Mr. Ray shouldn't know any thing about it.

Q. Where did he tell you that? A. He told me that, there in his office.

Q. What part of the office were you in when he told you that? A. In the main part.

Q. In the front part? A. Yes.

Q. Who was present when he told you that? A. Well, I couldn't tell you, sir, who was present.

Q. Did he speak loud so that people could hear him, other than yourself? A. No, sir; he talked low.

Q. Did you go in immediately on his telling you that in the back office? A. Yes, sir.

Q. And then paid him the fifty dollars? A. Yes, sir.

Q. Did you take a receipt for the fifty dollars? A. No, sir; I didn't ask him for no receipt for the fifty dollars, and he didn't give me any."

Senator PERRY — Is that contradicted?

Mr. STANTON — The respondent himself swears that —

Senator BENEDICT — What page is that?

Mr. STANTON — At page 893 — no such sum was paid to him by Mr. Murphy. This constitutes substantially his defense upon that charge. It is not denied but that Murphy was charged seventy-five dollars which he paid for the proof of the will. And once after that Judge Prindle met Murphy on the street corner and demanded five dollars more, saying that his clerk had made a mistake and had not charged for stamps. Murphy testifies that he never in any way employed Ray. This is answered by the respondent by proof that Ray was employed by Dr. Dwight, the executor, who was procured to renounce and who first applied for the proof of the will. This is a question solely of credibility whether Murphy, who is entirely disinterested in this matter, is to be believed in preference to the respondent himself, or *vice versa*. On page 893 the question is put, "Did John Murphy pay you fifty dollars at the time spoken of? A. He never did; never had any talk about paying fifty dollars." That is all that is said about it. As to the credibility of Murphy they have offered two witnesses, Scott and Berry, by whom they seek to prove inconsistent statements made by Murphy. Murphy had previously made an affidavit in reference to the matter, which had been published in the county papers, as follows:

"STATE OF NEW YORK, } *ss.:*
CHENANGO COUNTY, }

John Murphy, of the town of McDonough, N. Y., being duly sworn, deposes and says, that he is the executor of the estate of Edward Murphy, deceased; that on February 5th, 1868, he went before Judge Prindle to have the said Edward Murphy's will proved; and that said *Prindle charged* him *seventy-five dollars*, which he paid and left. *Said judge then followed him out into the street and told*

him that his CLERK *made a mistake, and he wanted five dollars more*, which he paid, supposing it to be the surrogate's fees.

JOHN MURPHY.

Subscribed and sworn before me, this 7th day of October, 1871,

EDWIN KELSEY,
Justice of the Peace."

Scott testifies that he had a conversation with Mr. Murphy (pages 707, 708), and that Murphy denied every statement made in this affidavit and yet, he also testifies that Murphy claimed, as substantially true, every important fact as alleged in that affidavit. That Murphy testified that he was executor of the estate of Edward Murphy.

E. H. PRINDLE—I think you are mistaken; that is not his testimony. I think he testified the reverse of that.

Mr. STANTON—I know that Scott testified that he said there was not a word of truth in this affidavit; and yet the truth was, that on cross-examination, Scott testified that he did claim that he paid seventy-five dollars to Ray; also that he paid fifty dollars on account of Dwight's renouncing.

Mr. E. H. PRINDLE—Paid it for Dr. Dwight?

Mr. STANTON—Paid it for Dr. Dwight.

Senator BENEDICT—Have you any reference to that testimony, Mr. Stanton?

Mr. STANTON—Yes, sir; pages 707 and 708.

Mr. E. H. PRINDLE—Mr. Scott distinctly testified that the affidavit was substantially false.

Mr. STANTON—It was not that Scott testified, and we claim that he testified that the evidence was false in every line and word; and then, there on cross-examination, Scott admitted that Murphy did reiterate, in the same conversation, the substance of the entire affidavit, claiming that he had paid these amounts of money which he testified in the affidavit that he did pay. Mr. Scott, in his evidence at page 708, says:

"Q. Didn't he say that he paid five dollars to Mr. Prindle on the street corner? A. He did not.

Q. Didn't he claim that he paid it? A. He didn't claim to me that he paid it.

Q. Well, did he say whether or not he paid it? A. He claimed to me that he paid seventy-five dollars.

Q. The seventy-five dollars in the office? A. To Mr. Ray.

Q. And he paid Judge Prindle the fifty dollars there? A. He

didn't claim that he paid the judge that fifty dollars; he claimed that he paid the fifty dollars that went to Mr. Dwight for renouncing the executorship.

Q. That went to him? A. Yes.

Q. Did he say that he paid Dr. Dwight fifty dollars? A. I asked him if he paid any thing besides the seventy-five dollars.

Q. Well, he didn't say to you that he paid the fifty dollars? A. He said he paid fifty dollars to go to Dr. Dwight for renouncing the executorship.

Q. You are positive about the exact language that he used? A. I don't think he said he paid it to Dr. Dwight; I don't think he said who he paid it to."

The evidence of Dr. Dwight is, that outside of this fifty dollars, and in the town of Preston, Mr. Murphy paid him seventy-five dollars, a portion of which was the sum which he received on account of his renouncing the executorship. Murphy paid that outside of the fifty dollars which he testified he paid to the respondent in this case. Mr. Silas Berry, a brother-in-law of Mr. Scott, testifies he heard the same conversation. It was in a crowd, when parties were politically excited, just before election. A large crowd. Page 710, he says:

"Q. Did he state how much he paid? A. Seventy-five dollars.

Q. Did he state whether that was all that he paid? A. Yes, sir; with the exception of fifty dollars that he spoke of that was going to Dr. Dwight."

Here are both of these witnesses saying that the judge demanded the five dollars on the street corner, saying that his clerk had made a mistake, and yet they at the same time testified that this affidavit that John Murphy made was read through by them, and that affidavit talks about the five dollars. They claim that that was read over to him, and yet testify that nothing was said about the five dollars at all. He sustained the evidence of these two witnesses. Now, then, it seems to me, that attempts to weaken the evidence of a witness by claiming that he made inconsistent statements in some political controversy among a crowd of people, all excited, was really of very little account. The probability would be against rather than in favor of a perfect hearing and understanding of all the language read. Even in this case it seems from the evidence that Murphy claims substantially the same facts to which he has testified here. Here these two witnesses, Mr. Scott and Mr. Berry, whose occupation during the political campaign was to traverse the county and repeat the statement that John Murphy had made to them that he

had entirely retracted the statement, by hearing their own statements made so often have began to believe it themselves. That is a thing which lawyers understand. But I will pass this charge. The substance of the seventh charge is that the respondent took pay from the Greene Railroad Company for his services as county judge, in and about the town of Greene, in and about that company. Under this charge Mr. Birdsell, the president of the company, testifies, at page 544 of the case:

"Q. Are you the President of the Greene Railroad Company? A. Yes, sir.

Q. Did you have an interview with Judge Prindle in reference to bonding the town of Greene in aid of the Greene Railroad Co.? A. Yes, sir."

Following, on page 545, Mr. Birdsell, after testifying to going there with the petition of the tax payers of the town, for the bonding of the town of Greene, says that they went to Judge Prindle for an order for publishing the notice. He says, "he made the remark, after getting along with part of it, that he was not very familiar with the law, and that it was a new law to him, and that we had better employ counsel, and suggested, I think, that Mr. Elizur Prindle had been engaged in bonding Norwich for the Midland, and was more familiar with the law than he was, and I went and engaged Elizur Prindle as counsel; he came in, and after seeing what the judge had written, he made some suggestions and alterations, and completed our business, and was our counsel after that during the trial of that affair.

Q. Up to that time, had you employed any counsel in that particular case? A. No, sir, not in that particular case; Mr. Chase drew up our petition, I think.

Q. Can you tell what further was done at that time? A. I don't think there was any thing being done."

Then he testifies to the matter coming on for a hearing, in the month of February, 1870:

"Well, sir; how long were you engaged on the matter of the hearing? A. Well, I think a matter of eight or ten days; it was a long, tedious trial.

Q. During the time of that hearing did you have any conversation with Judge Prindle as to a payment to him by the Greene Railroad Company, or by your party, for his services in reference to that matter, and, if so, state what? A. Well, I can say that I did; I asked the judge a question; I did not know what the law was; I did not know whether it was a salaried office; I did not know when

he got his pay there; I know on one occasion of an adjournment for dinner; I was sitting beside the judge; I says, 'Where do you get your pay for this business; it is a long, tedious affair, and who pays you? Do you get your fees from both parties, or does the party who is beat have to pay the costs in this matter?' He said his office was a salaried office; that he got no pay unless it came outside; unless he got it out of us fellows; unless we done something for him; that it was a salaried office, and that he was entitled to no fees."

And on the top of page 547, in answer to a question by Senator D. P. Wood:

"Q. Are you now stating what you said to him? A. Yes, sir; we thought we had our town bonded and there was a strong vote against us and we wanted to have a fair show; and that hearing should be satisfactory; that was about all that was said.

Q. Was that talk the same conversation that you have already stated he made his former remark during? A. Yes, sir; it was all at one time; that is the only conversation I had with him.

Q. Who else was present to hear this conversation? A. No one, that I know of; we were sitting together on the bench."

This attorney whom the judge recommended should be employed in the case, is not only the cousin of the respondent, but his intimate friend, living in his family, his counsel and advocate in this case. It is to him that Welch, a member of the executive committee of the Greene Railroad Company, goes not only to pay him for his services as counsel, but also to pay the judge in pursuance of his own suggestion. Mr. Welch testifies (page 564) as follows:

"Q. Mr. Welch, will you state if you, as a member of the executive committee of the Greene Railroad Company, went to Norwich to settle the demands against the road? A. Yes, sir.

Q. Who did you see at that time? A. Mr. Elizur H. Prindle.

Q. Do you recollect when that was? A. Well, it was some time in March, 1870.

Q. At the time that you went, had you been informed of the conversation which Mr. Birdsell had had with Judge Prindle?

Mr. E. H. PRINDLE — I object to any conversation that was had.

The question being put as to whether the objection should be sustained, it was decided in the negative.

A. I was informed by Mr. Birdsell.

Q. Now then go on and state the interview that you had there; first, where was it? A. In his office.

Q. Mr. E. H. Prindle's office in Norwich village? A. Yes, sir.

Q. Now state the interview? A. Well, sir, I would rather you would ask questions; I went into the office; do you want the whole interview as near as I can remember?

Q. Yes. A. I went into Mr. Prindle's office and asked him for his bill, and he handed me a bill; I then spoke to him, and told him what Mr. Birdsell had said to me in regard to Judge Prindle; I asked him if he could not put it in his bill, and the remark to me was, that he was afraid it would make his bill too large.

Q. Will you state what the bill was that was presented to you? A. $500.

Q. For what purpose? A. For counsel fee.

Q. In what matter? A. In the Greene Railroad Company.

Q. In this proceeding that had been pending before Judge Prindle? A. Yes, sir; I then said to him, perhaps you had better see the judge and I will come in again after dinner; he told me he would; I went in after dinner and he handed me a bill for $1,000; I remarked to him that I didn't think our people, I didn't know but they might think it was too much, and he said to me that the judge thought he ought to have as much as he got.

Q. Where was Mr. E. H. Prindle boarding at that time? A. That I couldn't tell you.

Q. You don't know? A. No, sir; I don't.

Q. You say he had been to dinner, do I understand you? A. Yes, sir; he had been to dinner; he said he would see the judge and I might come in after dinner.

Q. Well, sir, what further occurred at that time? A. I took the bill home, sir.

Q. You didn't pay the bill? A. No, sir; I couldn't pay it.

Q. Is that all the conversation that you now recollect that occurred between you and Mr. E. H. Prindle? A. That is all, sir.

Q. You say that you stated to him this conversation that Mr. Birdsell had had with the judge? A. I did, sir."

Now Mr. Julian testifies (page 575):

"Q. Did you go out a subsequent day to the office of Mr. Prindle, and pay his bill? A. I did.

Q. How did you pay it? A. In the town of Greene bonds.

Q. Can you state how you came to take the bonds there for the purpose of payment, instead of taking money? A. They were handed to me by the treasurer of the company to pay to Mr. Prindle; to him as that was—"

That is merely proof about the payment. In behalf of the respondent himself, Mr. E. H. Prindle testifies at page 712. He says:

"Mr. Welch came to my office; couldn't have told the date, but I should have stated it was in March; the date of the receipt, I believe, is the 7th of March; I should presume it was about that time; he came into the office some time before dinner, and said he had come to see me in relation to my bill; that he had no power to settle the matter or to agree upon any bill, but he wanted to get my bill; he stated further that they wanted to make a little present to the judge; he stated that the judge had performed a great amount of labor, for which he received nothing, and that they wanted to make him a little present; he stated, furthermore, that no word had ever been spoken to Judge Prindle that he would receive any thing; that no intimation of the kind, in any way, shape or manner, had ever been made to him; that the loans and transactions had been perfectly fair and honorable in every respect."

Mr. E. H. PRINDLE—The what?

Mr. STANTON—It is "loans and transactions" here. It is a mistake evidently. I don't now think precisely what it was. The transaction probably covers it; "he didn't tell me that Maurice Birdsell had had any conversation with Judge Prindle, in regard to the matter, in regard to any pay or compensation of any kind; never said one word of the kind at all; I don't recollect in particular what I said; I didn't say much about the proposition.

Q. The proposition in relation to the judge? A. Yes; I might have told him that I would see the judge at dinner, and I might not; I can't say how that was, but I made out no bill whatever at that time; neither of $500 nor any other sum; nothing said about $500; I told him that he could have my bill after dinner; I was boarding at Judge Prindle's at that time, and at the dinner table I saw him; I told him that Mr. Welsh had proposed to me that he wanted to make him a little present; told him in short what Welch had said to me; and he told me he wouldn't have any thing to do with it whatever; after dinner I went back to the office; I made out a bill of a thousand dollars; I made out the bill at what I considered the services worth; I believe my services for the Greene Railroad Co. were worth a thousand dollars; Mr. Welch came into the office some time after dinner; Mr. Charles Shumway was present, a gentleman who had been in my office some time; when he came in I can't state whether he asked me for the bill or not; I handed him the bill; there was but little said, scarcely any thing; I handed him the bill of a thousand dollars; not one word was said about Judge Prindle in any way, shape or manner; he took the bill, looked at it and I

think he said he would take it down and see what they said, or something to that effect; and that was all."

On the cross-examination, Mr. Prindle testifies at page 713:

"Q. What excuse did you give to him as the reason why you did not give in your bill then instead of waiting until after dinner? A. Well, sir, I think he wished me to see the judge, or something of that kind, or I told him I would see the judge.

Q. Then you didn't make out your bill until after you had seen the judge; told him you wanted to see the judge before you made it? A. I did not tell him I wanted to see the judge; I didn't make out any bill whatever, until after that interview.

Q. But have you any other reason to give why you didn't present your bill before dinner at that first interview than what you have stated? A. I don't think he asked me to present any bill before dinner.

Q. Have you not already sworn that he said he came to get your bill, and to see how much it was, when he first came in? A. He did come up to see how much my bill was; yes, sir.

Q. You didn't tell him the amount of your bill, you say, before you went to dinner? A. No, sir.

Q. Now, sir, what reason have you to give why you did not tell him the amount of your bill before you went to dinner? A. I have the reason that he made the suggestion in regard to making the judge a little present, as he said; I didn't dissent from what he said in regard to that at the time.

Q. And you made the proposition to the judge? A. I told the judge what he said; or the substance, in short; I had very few words with the judge at that time at the dinner table."

It will be observed that the evidence shows from the lips of this cousin, and attorney at law, and holding at the time the responsible and high position of member of Congress, that he consents to bear the offer to the respondent of a present on account of judicial favor, and he did bear it. It is too much to expect that the person who will consent to be the means of making such an offer to a judicial officer, with the full knowledge and appreciation of the nature and character of the act, cannot be depended upon to testify to those facts which will convict his client, his cousin, his intimate friend and patron of a crime so grave? We are not surprised then that he testifies that none of the money paid him by the railroad company reached the respondent; nor ought we to be surprised that the respondent himself so testifies. If, however, we look a little more closely at the evidence of Mr. E. H. Prindle, we can the better

judge of the amount of credit to which it is entitled. He testifies that at the first interview with Welch, he did not make out his bill, and the completion of the business was postponed until after dinner, that he, Mr. E. H. Prindle, might have the interview with the judge about what they were going to give him.

In denying the conversation to which Welch testifies as occurring after dinner, in which Mr. E. H. Prindle reported that the judge thought he ought to have as much as he, E. H. Prindle, had, he says, with great emphasis and assurance, that not one word was said in reference to the judge, nor to the matter of his pay, the determination of which was the sole reason why the interview after dinner was arranged. Can this be true? And if sworn to a thousand times over, by parties so deeply interested, could you believe it? This interview, arranged after dinner for the very purpose of seeing what the judge shall say; postponed until that time that his business may be completed, and yet, when they come together for the purpose of completing this business, not one word, as he says, of reference is made to this, the very business for which the interview was arranged, for which this matter was postponed until after dinner! Can that state of facts be true?

They will undoubtedly argue that the remarks of Judge Prindle in reference to the pay which he could get only "out of you fellows," was a joke and nothing more. That it was regarded by Birdsell and the Greene R. R. Co. in a serious light cannot be doubted. After they had received the favor which they expected at the hands of the judge, and had nothing more to hope for or expect, the executive committee is informed of this talk between Birdsell and the respondent, and the committee instructed to carry out the understanding. Welch's interview is in pursuance of this. Is human nature such that men are anxious to give away their money to complete a joke simply?

Perhaps you may find that the suggestion of pay by the respondent himself, his suggestion of his cousin as the counsel for them to employ, and the payment to such counsel of $500 by the railroad company on account of the respondent, falls short of the legal proof required to sustain the charge. That we have failed to show the actual receipt of the money by the judge we admit, unless the relations of the two Prindles are shown to be such that E. H. Prindle may be presumed to be the agent of the respondent for the receipt of the money. That they talked about the very matter between themselves at the dinner table, before the money was paid, is sworn to by each of them. While they each swear no authority was given, the proof shows that Mr. E. H. Prindle received the money.

Senator MURPHY — Did Prindle, the witness, say that he did not pay him?

Mr. STANTON — Mr. E. H. Prindle swears that he did not pay him any portion of this money. The subject of the eighth charge is the neglect of duty in the decision of cases.

There was little proof offered under this charge. I will read a little from the evidence of Mr. Newton, page 633 of the case:

"*Thorp* v. *Benedict*, argued in December, 1868, and decided in April, 1870; *Hopkins* v. *Atkins*, an appeal, April, 1868; my register does not show, and I have not the means of knowing when argued; a decision was had in May, 1870; case of *Soule* v. *Bowen*, an appeal in October, 1870; argued in July, 1871, and not yet decided, so far as I know; *Burlison* v. *Steer*, I find, was appealed in March, 1870, and argued some time in 1870, and not yet decided, so far as I know; *Davis* v. *Reynolds*, an appeal in February, 1870, argued April, 1870, and not decided yet, so far as I know; *Gates* v. *Woodley*, appealed in March, 1869, argued in April, 1869 or 1870 (the precise date I can't state), and no decision yet, to my knowledge; then there is the case of *Newton* v. *Northrop*, argued in July, 1870, and decided — well, judgment entered in December, 1871 — some time in the fall of 1871; that is about the range; I can't tell in all these cases whether briefs were submitted at the time of the argument; sometimes we submit our briefs afterward; sometimes we are a little careless in our practice, or a little crowded; I think that includes all the cases I have remaining, unless they have been argued this last spring or winter."

With that I will pass that charge. The substance of the ninth charge is a refusal, subsequent to his election, to submit to an examination by the board of supervisors of the county. By stipulation of counsel the certified copy of the minutes kept by the clerk of the board of supervisors attached to the charges, were regarded as the true statement of the proceedings before the board, and those minutes have not been represented in the case. They will be found at page 44 of the charges (not 44 of the case). I will first read the act under which the investigation was instituted.

Laws of 1858, chapter 190. A copy of this provision of the statute may be found at page 286 of the case, printed in as a part of the opening on the part of the people. It reads in this way:

" Whenever the board of supervisors of any county shall deem it necessary or important to examine any person as a witness, upon any subject or matter within the jurisdiction of such board, or to examine any officer of the county in relation to the discharge of his official

duties, or to the receipt or disbursement by him of any moneys, or concerning the possession or disposition by him of any property belonging to the county, or to use, inspect or examine any book account, voucher or document, in possession of such officer or other person, or under his control, relating to the affairs or interests of such county, the chairman or president of such board shall issue a subpœna in proper form, commanding such person or officer to appear before such board, at a time and place therein specified, to be examined as witnesses," etc.

I call your attention again to the commencement of this statute: "Whenever the board of supervisors of any county shall deem it necessary or important to examine any person as a witness, upn any subject or matter within the jurisdiction of such board, or *to examine any officer of the county in relation to the discharge of his official duties, or to the receipt or disbursement by him of any moneys*," etc., after due proof of the service of a subpœna upon the respondent, under the passage of the resolutions to the effect that the questions put were pertinent and proper, the following record appears at page 48 of the charges.

It is in the exhibit that were attached to the charges. It is the ninth charge. I will read page 48 of the charges, that is, with the exhibits attached to the charges:

"Mr. Hyde offered the following, which on motion was adopted—ayes 11, noes 9:

Resolved, That the witness, Horace G. Prindle, county judge of Chenango county, be and he hereby is required to bring and produce, as evidence upon this examination before this board, the petitions for proofs of wills, and for letters of administration and guardianship, filed in his office during the four years last passed.

Mr. NEWTON—Will the witness produce the papers mentioned?

Mr. MYGATT — The witness will say no, for the reason that the board has no jurisdiction.

Mr. NEWTON, to witness—During the last four years, in whose handwriting have the records of the office of the surrogate of Chenango county been kept?

Mr. MYGATT—We make the same objection as to the last preceding question.

Mr. NEWTON—We offer to prove that George W. Ray was in fact the clerk of the surrogate of Chenango county during those years by the records and the acts done, and that, while thus clerk, himself and the surrogate have received divers fees and charges for the preparing of papers used before the surrogate in his official

capacity. We offer it with the view to call for an accounting for those years.

Mr. MYGATT — We object on the ground that this board has no jurisdiction, and no fees are provided by statute.

Mr. NEWTON — During the last four years have you received fees for drawing papers to be used before you as surrogate?

Mr. MYGATT — That is a subject not within the jurisdiction of this board, and for that reason the witness refuses to answer."

Again at page 50—"I repeat the question. During the last four years have you received fees for drawing papers to be read before you as surrogate?

Mr. MYGATT — I repeat the objection. It is a subject not within the jurisdiction of this board, and for that reason the witness refuses to answer; I also make the further objection that the proceedings of the board are in open violation of the statute."

Again Mr. NEWTON says—"Will you produce the records of wills proved in your office during your term of office?

Mr. MYGATT—The records are public property, open to investigation in the office, and will not be brought here; the proceedings of the board are in open violation of the statute."

Mr. Newton was the counsel engaged by the supervisors to go before the board, and he is the one who puts these questions and which the witness refuses to answer. As a conclusion of the proceedings of the board, the following resolution was passed (page 54 of the charges):

Mr. HYDE—I offer the following:

WHEREAS, This board, by a resolution thereof, on the 25th day of November, did require Hon. H. G. Prindle, county judge, acting as surrogate of the county, to appear before them at the time therein specified, to be examined in relation to the discharge of his official duties, or the receipt or disbursement by him of any moneys, and that subpœna in proper form be issued by the chairman of the board; and the said county judge and surrogate having appeared upon such examination, and refused to answer questions put to him thereon touching the discharge of his official duties, or the receipt or disbursement by him of any moneys, which questions a majority of this board decided to be proper and pertinent, and which appear in the proceeding and evidence upon said examination; and also having been therefor duly subpœnaed, further refused to produce upon said examination books of record of wills proved before him during his term of office from January 1st, 1864, to the present time in his

possession and under his control, relating to the affairs and interests of the county.

Resolved, That the clerk of the board be and he is hereby required to make a correct copy of all proceedings and evidence, including all offers and demands of evidence, and protest on said examination on behalf of said county judge and surrogate, certify the same, together with this resolution, and cause the same to be laid before the Senate at the next session thereof for such action as said Senate shall deem proper and in accordance with their duty and the law."

During these proceedings a protest was entered by the minority part, which is found at page 51 of the charges. It is protesting against the jurisdiction of the board. The supervisor, Isaac Plumb, who presents this protest and who leads off the list of names which have signed it, and acts as a sort of captain of this minority, is the same man who is sworn as a witness in the case, and in order that you may know the better who he is, and the reasons that may have controlled him in this course which he took in the board of supervisors, I desire to read a little from his evidence at page 867 of the case. He was brought up as a member of the board to testify as to the false reports which Judge Prindle had made to that board, the fees received by him, etc., and he testifies in this manner in reference to it:

"Q. Was there any talk among the board of the probable amount he had failed to report? A. I have no recollection.

Q. Was there any talk about the amount of expenses he had been put to for fuel and stationery, such as you have mentioned? A. I have no recollection that there was any amount stated.

Q. Were you on the committee appointed to investigate the accounts of the county judge? A. In 1865–66?

Q. Yes. A. No, sir.

Q. Were you in 1867? A. Yes, sir.

Q. Did you make an examination of the county judge's books when you made your report in 1867? A. We did not; no, sir.

Q. Did you make any examination to test the accuracy of the report made by him? A. I think not; he made his report and we examined the report and got an explanation from him.

Q. You simply read the report? A. Yes, sir; with his explanation.

Q. What explanation did he give of his report made in 1867? A. Well, the explanation was that he had supplied the office with fuel and some other things, and retained fees sufficient to cover them.

Q. Which he had not reported? A. Which he had not reported.

Q. Now, sir, you, as a member of the board of supervisors, assented to that as proper, and reported to the board that this report was correct, after that conversation? A. Yes, sir.

Q. How much did Judge Prindle say that he retained in his possession in the year 1867, of fees that he had not reported? A. I couldn't say.

Q. Can you tell whether he made any estimate or gave any indication of any sum? A. I don't remember as to that; it is very probable that he did; he satisfied me.

Q. Did he make any statement as to the amount of expenses that he had been to, that he thought he ought to be reimbursed for? A. Yes, sir.

Q. Well, sir, what statement? A. The statement was that he had supplied the office with fuel.

Q. Did he give any estimate of the amount of those expenses that he thought he ought to have? A. No, sir; not of the amount, that I recollect.

Q. Was your attention called to the affidavits that he made to the accounts that he rendered? A. Yes, sir.

Q. Was your attention called to the fact that he did not in those affidavits swear that he had not received any more fees? A. I have no recollection as to that; I have no recollection as to the wording of the affidavit.

Q. Was your attention called to any thing in reference to the affidavit itself? A. I don't know that it was.

Q. Was your attention called to the fact that the report was not itemized, as the law requires, by Judge Prindle, when he talked with you about it? A. I think it was; yes, sir.

Q. What excuse did he make as to that, if any; state what his language is? A. Well, he made no excuse, further than he had paid out these moneys for these purposes, and he had retained fees sufficient to cover them."

Now, then, the defense claimed by the respondent under this ninth charge, as his reasons for refusing to be examined before that board as I understand it, is that the statute makes provision for pursuing the further investigation for a contempt by providing a course of proceeding for contempt before a judge of the courts. It is claimed, because they did not take this course the respondent is justified. I fail to see the point of the argument. If a contempt was committed before that board which would authorize the board to go before a judge of the Supreme Court, under the language of

the statute, until it was committed the board had no opportunity to do so, certainly. After it was committed, if the board failed in their duty of having the respondent punished for contempt, does that purge him of the contempt? Does that render his refusal to answer justifiable? Now, the board looked upon this matter in the practical light. What could they accomplish after they had gone through with a long investigation and developed these facts? They could not remove the county judge nor suspend him. All they could do would be to recommend a proceeding for removal as the law provides, and this they determined to do before, rather than the expense and trouble of a further investigation there. They were satisfied. They did as you or I would do if you had a mortified leg, and you knew the only cure was amputation, and you were in the hands of a pill doctor. You would not depend upon the pills but go to a surgeon who had the requisite implements and skill to sever the leg from the body. I know the further defense is made that the respondent acted entirely under the advice of counsel, but the advice of counsel is not a defense to the charge. He ran the chances of the counsel's being mistaken, if the board were authorized to make the examination; and, it seems to me, no impartial man can read this statute, which is as broad as language can be in granting the authority to examine officers of the county in reference to their transactions of their official business, and saying that this board were not authorized to pursue its investigation. He also ran the chances of his counsel being mistaken, as every client does in any legal proceeding, even assuming that the advice was given by his counsel without a knowledge of these facts which were in prospect of development; the facts of the manner in which he had rendered accounts to the county board of supervisors, and the fees which he had retained in his pocket belonging to the people of the county. Now I say if, with a knowledge of those facts which have come to light upon this proceeding, of the manner in which he had returned his fees, and the manner in which he had failed to return them, his counsel — and we are to assume that they knew it, that he told them the whole case — if, I say, his counsel advised him that he had better not run the risk of a development of those facts, but had better assume the responsibility of an utter refusal to be examined upon this investigation, trusting to the chances that no further proceedings would be taken before that board, it seems to me, under those circumstances, certainly the advice of counsel is entitled to no weight in this proceeding. And the decisions hold that the advice of counsel is no defense. I refer you to the case of

Copet v. *Parker*, in the 3d of Sandford's Superior Court Reports, page 662; *Lansing* v. *Eaton*, 7 Paige, 364; *Rogers* v. *Patterson*, 4 id. 450; *Hawley* v. *Bennett*, 4 Paige's Ch. 163, and numerous other cases that may be cited, that the advice of counsel is no defense upon a proceeding of contempt for violating the order of the court. It is no defense to the responsibility which he assumed in saying to a board of supervisors that he would not permit this proceeding to proceed. What comment ought we to make upon the contempt of this county by this respondent? Had he been an innocent man — had he been a man who wanted to have his character exposed, and his official character exposed, would he have hesitated an instant there before the board of supervisors of Chenango county? Would he have done it? Why, it seems to me, that it characterizes the feelings of this respondent and his own knowledge and his own convictions of the guilt of himself. Another point made by the defense upon this charge is, that the board have acted upon the accounts formerly, and that the further investigation of the board was barred by the former action of the board. Now, then, the proof shows that only in one year had there been any action taken by the board of supervisors upon these reports.

Mr. E. H. PRINDLE — You are mistaken about that.

Mr. STANTON — Not by any means. Produce it, sir; I would like to have you, sir. But I will pass on to the tenth charge.

Senator D. P. WOOD — I will ask you if this statute that you cite as the foundation of your charges in this article, does not of itself furnish a remedy where the officer refuses to answer?

Mr. STANTON — I admit, sir, that it does furnish a remedy. It furnishes one remedy.

Senator D. P. WOOD — Is not that the remedy contemplated by the law?

Mr. STANTON — That may be the remedy contemplated by the law, but before, however, you admit that we claim the right to show this refusal, and this conduct of this respondent as one of the things to go to make up the case on this proceeding; that fact does not necessarily throw it out of the consideration of this Senate. If he was wrong in that refusal — and it is for the Senate to say whether he was wrong or not — if he was wrong and is guilty of the contempt, it was a violation of his official duty, and as such may be properly considered as one of the acts which he has committed in violation of his oath of office, and showing that he is not the man who ought to fill that station. It is part of the proof which may properly come in here to make up this case. While it might be pursued otherwise,

we ask, under this statute, whether or not it had been pursued. So far as this proceeding goes, it makes no difference. Had it been pursued and then determined that he was wrong, he would have had an adjudication outside. The statute provides that when a party refuses to be examined under the statute, it shall be the duty of the chairman of the board of supervisors to take the proceeding before a judge of the Supreme Court for contempt.

Senator D. P. Wood — The Supreme Court may issue an attachment on application for contempt.

Senator Benedict — Suppose they punish him for the contempt, would that prove that he had not been guilty of misconduct?

Senator D. P. Wood — If he answered all the questions asked him then the charge would be removed.

Mr. Stanton — If he had been punished for the contempt by the court, you might say that that removed it, the same as if he had been convicted on an indictment for petit larceny; if you please, that the conviction and payment of a fine had entirely removed it. Still, is that any reason why we should not show that fact, the fact that he had been convicted, that he paid the fine, as one of the things to show his official character and his offense in the position which he holds? We claim that it is proper to be considered here, notwithstanding it might have been continued before a justice of the Supreme Court, or might not have been continued. Whatever disposition might have been made there, if he was wrong — and the Senate can say from the proof whether he was wrong in refusing to testify — then, we say, it is something proper for you to consider here as one of the violations of his official oath, which goes to test the qualification and competency of the man in the position which he was holding.

Senator D. P. Wood — May I ask you a question: if it was a proceeding under the statute, the whole question of whether he was right or wrong, in refusing to answer, would not have been decided by the Supreme Court judge?

Mr. Stanton — It probably would have been.

Senator D. P. Wood — Supposing it to be decided against him, have we any right to assume he would not have answered all the questions?

Mr. Stanton — Then, sir, we have no right to assume, that I know of, rather I would not regard it as material, whatever we assume it, one way or the other.

Mr. E. H. Prindle — Your idea is he had no right to test the law?

Mr. STANTON — Not at all, sir; we claim he had a right to test the law; then it is proper for you to consider that matter here and pass upon these charges against the respondent.

Senator MURPHY — The reason believed was, that the board of supervisors had no jurisdiction over the matter?

Mr. STANTON — Yes, sir.

Senator MURPHY — Are the grounds stated in any way?

Mr. STANTON — The ground is given in this protest; I don't know of anywhere else; Mr. Plumb swears that this protest which he presented was framed by Mr. Glover, the counsel of Judge Prindle in this proceeding, and his counsel before the board. He has as a member of the board contested with the respondent's counsel, as he himself testifies in his evidence.

Mr. MYGATT — Signed by Judge Prindle?

Mr. STANTON — Presented by Judge Prindle?

Mr. MYGATT — Signed by Judge Prindle?

Mr. STANTON — I think not, sir. I think the protest is at page 51 of the charges, if I recollect right. I am thinking about the protest of the members of the board, at page 45 of the charges.

"Mr. Glover on behalf of Mr. Prindle, read the following:

A resolution having been adopted by the board of supervisors of the county of Chenango, a copy of which was furnished to the undersigned this day, which said resolution is in the words and figures following, viz.: (See copy resolution attached hereto.)

The undersigned, county judge of the said county of Chenango, hereby protests against the right or power of said board of supervisors to pass such resolution, or to require him to answer to them 'concerning his official conduct,' or 'the receipt or disbursement of any money,' further than that he recognizes the right of said board of supervisors to inquire of the undersigned relative to the receipt and disbursement of any and all moneys received and disbursed by him since chapter 246 of the Laws of 1867 took effect, for 'copies of records or papers.'"

That means the Laws of 1869, I suppose. It is a misprint; that law was passed in 1869.

The grounds of such protest are as follows:

"1st. There is no law giving the said board authority to inquire concerning, or to investigate the official acts and conduct of the county judge.

"2d. The Constitution of the State of New York, article 6, sec. 11, provides another and far different tribunal for the purposes of the investigation proposed."

Why, he is claiming that this ought to be the investigation. The very position which the board took by passing a resolution to the effect that it be continued here.

"3d. The board of supervisors have power to investigate the official conduct of such officers, only as the statute expressly gives them jurisdiction over, and then only to that extent expressly conferred by the statute. The powers of the board of supervisors are such only as are expressly conferred by the statute, and by no statute are the powers conferred upon them which authorize such an investigation as seems to be contemplated by said resolution.

The undersigned, therefore, respectfully but firmly declines to submit to any inquiries by the said board, into his official conduct or concerning any money received or disbursed by him except as hereinbefore stated."

Right in connection with that I wish to read this act again: "Whenever the board of supervisors of any county shall deem it necessary or important to examine any person as a witness upon any subject or matter within the jurisdiction of such board, or to examine any officer of the county in relation to the discharge of his official duties, or to the receipt or disbursement by him of any moneys, or concerning the possession or disposition by him of any property belonging to the county, or to use, inspect or examine any book, account, voucher or document in the possession of such officer or other person, or under his control, relating to the affair or interests of such county, the chairman or president of such board shall issue a subpœna in proper form, commanding such person or officer to appear before such board, at a time and place therein specified, to be examined as a witness; and such subpœna may contain a clause requiring such person or officer to produce, on such examination, all books, papers and documents in his possession, or under his control. 'It is in that round sum of $500.' And just so he can put $2,000 into $500, and tell parties who seek to verify the correctness of these statements, 'Why, it is all there in that $500,' one round sum. Now, we think we shall be able to show that these returns have been made systematically, for the very purpose of covering the remainder of fees which have been retained by this judge which belonged to the county of Chenango. We shall be able to show the fact to you, that he has received vastly more than the fees so returned. And this is one of the means by which he has been enabled to evade the detection of his failure to return the fees in each and every particular case. The board of supervisors for the county after the last election of this judge, in November, sought to

make an investigation in this matter, and see what fees were still retained in the pocket of this judge belonging to the county. The proceedings of that board are printed in connection with the charges as a part of the evidence referred to to sustain one of them; as a part, also, as we claim." But I will pass this charge, unless there is some further question the Senate wish to ask.

Senator MURPHY — Do you claim that they had a right to examine into the manner in which he performed his judicial duties? That is an official duty, I presume.

Mr. STANTON — I don't claim that they had a right to call him to account for the manner in which he discharged his judicial duties; but I do claim that they had a right to call him to an account for the manner in which he had discharged the administrative duties of his office, a distinction drawn by the courts. It has ever been held that for judicial acts of a judicial officer, he is not to be held accountable anywhere; that is, those done in good faith. But there is a larger class of duties which are known as the administrative duties of his office, such as the collection of fees, and the keeping of the books and records of his office, and rendering the accounts. And they don't assume to go into any examination, except such as those administrative duties to which I have referred. They nowhere assumed to question him as to why he rendered his judicial decision in the decision of a cause. Not at all. They neither assumed nor claimed any thing of the kind; and the respondent well knew it. They sought to make an examination of this old question of the fees that he still retained in his pocket, belonging to the county of Chenango. They well knew that was the object of the investigation; but they did not want those things developed. They did not want those things proved.

Senator MURPHY — You say he delayed giving decisions in causes?

Mr. STANTON — Yes, sir.

Senator MURPHY — That is a part of his official duty?

Mr. STANTON — Yes, sir.

Senator MURPHY — Have they a right to inquire into that?

Mr. STANTON — I can only answer by saying that they made no attempt to. They asked certain specific questions, and he refused to answer them; and it is for that we arraign him. Those questions pertain to the question of the fees, and the question of return of the books of his office. It is the specific questions that he refused to answer, and those only.

Mr. PRINDLE — They were acting under a resolution to inquire into his official conduct.

Mr. STANTON — If the resolution was too broad he should not have declined to answer such questions as were proper and pertinent. If their resolution was too broad he should have been willing to have gone up to the line of his duty and answer such questions as they legally might put, and he legally might have answered; it is no excuse to say that the resolution was too broad —

Senator MURPHY — One more idea; is he a county officer within the meaning of this statute?

Mr. STANTON — It says all county officers.

Mr. MYGATT — That is not the statute; it is the Constitution.

Mr. PRINDLE — Yes, sir.

Senator MURPHY — He has jurisdiction to try causes in any county in the State, hasn't he?

Mr. STANTON — He has, upon the application of the judge of another county.

Senator TIEMANN — How about surrogate; can he act in any other county as surrogate?

Mr. STANTON — No, sir.

Senator TIEMANN — Then it is clearly a county office?

Mr. STANTON — The office of surrogate must be a county office, and really it seems to me that the office of county judge must be a county office; he may, on the application of the county judge of another county, hold courts in that county. If it necessarily renders him no longer a county officer, when elected by the people of the county; if it charge his election to the people of that judicial district through which he may serve as county judge only, then it seems to me there might be an argument that he was no longer a county officer, but was necessarily elected by the people of the county, it seems to me that he necessarily remains such. The substance of the tenth charge is the granting of orders to executors to pay large sums to counsel out of the estates under his control. Upon this charge I call your attention to the case, in the 26th N. Y. Reports of *Davie* v. *Patchin*, page 441. I will simply read the note of the case; the senators can refer to it if they please. "A surrogate in proceedings before him may award costs to be taxed, but he has no power to make an arbitrary allowance for counsel fees, when any such counsel fees as may be taxable are allowed to the party and not to his counsel." In addition to that the statutes precisely make this provision. I read also from Dayton on Surrogates, page 39, quoting the statutes. This article is headed "Of the surrogate's power to award costs." The above quoted title of the Revised Statutes concerning surrogate's courts provides as follows:

"Section 24 (Sec. 10). In all cases of contest before a surrogate's court, such court may award costs to the party in the judgment of the court entitled thereto, to be paid either by the other party personally or out of the estate which shall be the subject of such controversy." That is fifth edition Revised Statutes, 3d vol., page 367, section 25. The law of 1837 contains the following provision (Laws of 1837, page 536):

"In all cases where the surrogate is authorized by law to award costs, he shall tax the costs at the same rate allowed for similar services in the Court of Common Pleas." That is the statute. So much for the law. Now, then, I call your attention to the proofs under this charge at pages 597 and 598. This is in the evidence of Mr. James Brown, executor of the will of Holland Turner, deceased. He testifies as follows:

"Q. Was there a contest before Judge Prindle upon the proof of the will? A. There was.

Q. Who were employed as counsel upon both sides? A. I employed Mr. Ray and Mr. Newton.

Q. Who was employed upon the other side? A. Judge Kingsley, Elizur Prindle and Mr. Ufford.

Q. You propounded the will as executor, did you? A. I did.

Q. After the proceeding was ended and the will admitted to probate, did the judge give orders as to what payments should be made to counsel in the case? A. There was an order made in regard to the counsel.

Q. State what it was? A. Judge Kingsley, Mr. Prindle, Mr. Newton and Mr. Ray, $250 each; Mr. Ufford, $100."

I want to call your attention also to the top of page 627. That is in the evidence of Mr. Isaac S. Newton, in reference to the estate of Catharine Newton:

"Q. Do you know what order was made? A. Only from a letter.

Q. Did you see a memorandum of that in the judge's handwriting? A. I did.

Q. What was that? A. It was that he had directed $150 to be paid me, $150 to be paid to yourself, and $150 to be paid to Elizur, and $30 to Mr. Ray."

By a SENATOR — Do you understand that it has been the practice throughout the State, for the surrogate to allow a compensation to attorneys upon both sides in these contests?

Mr. STANTON — Not since this decision in the 26th New York Rep., I don't understand it to have been; if so, it has been in direct opposition to the statutes and the decison.

By a SENATOR — What was the date of that decision?

Mr. STANTON — March, 1863.

By a SENATOR — It has been the practice in the county in which I live since that. It has been the practice. The attorneys upon both sides claimed that they had the right in these cases quoted.

Mr. STANTON — Newton testified that he did not accept as much as was awarded.

Mr. E. H. PRINDLE — In the counsel's own case he has not stated whether he accepted it or not. He received part of the money.

Mr. STANTON — I received thirty dollars.

Mr. H. G. PRINDLE — You took the $150 that I awarded you?

Mr. STANTON — Several times during the progress of this case this same complaint has been made by the counsel upon the other side in reference to a matter of $150 that he says was granted to me, and I have said nothing about it. I did not desire to say any thing about it; not because I was ashamed of it, because I would like to have the whole facts known, and perhaps it is due to me under the circumstances that I should state them here now. Mr. Packer was the counsel; he resides eight miles below Norwich. The evidence is in this case. Mr. Packer came to me and desired me to assist him upon the proof of the will before Judge Prindle. I did so. He was going to be a witness in the case and wanted me to appear as attorney of record. When he got over there he says "I am going to be a witness, put Mr. Stanton's name in as attorney of record," and he did so. I knew nothing about the $180 when I got through.

Mr. H. G. PRINDLE — I asked you and Mr. Packer how much to put in the order and you named $150, and in pursuance of that I put it in.

Mr. STANTON — I wish to state a little further in reference to it. The order was granted entirely without my knowledge. Mr. Packer informed me, after the case was over, that he had made the arrangement with Judge Prindle, and he had ordered Judge Prindle to pay it to me, because I was attorney upon the record. I told Mr. Packer that I charged $30 for my services, and the executor came and paid me the money. I received the $150. I did receive the full amount, but I received it on account of Mr. Packer, and the full amount went to him, and I got only the $30 for my services. The eleventh and twelfth charges are general, and they were designed to cover such additional cases as we should design to prove on the trial of this case, and not special; under the rule of the Senate, the witnesses were discharged without being sworn.

By a SENATOR — Mr. President: It is now two o'clock. I move that the Senate do now take a recess until four o'clock.

The question was submitted and declared carried.

Senate re-assembled at 4 P. M.

The PRESIDENT — The counsel for the prosecution will proceed with their argument.

Mr. PECKHAM — I have not seen Mr. Stanton since the Senate took a recess, but I presume he will be here in a moment; I have sent for him.

Mr. Stanton having arrived, the PRESIDENT again instructed the counsel for prosecution to proceed.

Mr. STANTON—Mr. President and Senators: I regret to have detained the Senate, but being considerably tired I had lain down for a moment and unintentionally fell asleep; I have proceeded in my remarks as far as the thirteenth charge; this charge does not differ very materially from the second, and what remarks I have made upon that charge are equally applicable to this; the allegations were somewhat changed in order that the proofs which we should be able to make, not then definitely known, might not differ materially from the charges. As two counts for the same offense are some times put into an indictment, it is unnecessary for me to dwell upon this thirteenth charge. The fourteenth and fifteenth charges, in fact the fourteenth, fifteenth and sixteenth charges, are clearly admitted by the respondent on his cross-examination. I call the attention of the Senate to page 907, evidence of the respondent himself. The first of these charges (the fourteenth) alleges that he has neglected, during the time since the 1st day of January, 1864, to keep a book of fees, as prescribed by law in the statutes of the State. The fifteenth alleges that he has refused to make an itemized report of the fees received by him as judge and surrogate during the time from the 1st day of January, 1864. The sixteenth alleges that he made his reports in gross sums, and that he had an affidavit of a peculiar character attached to them for certain purposes—corrupt purposes, if you please. I proceed to read somewhat from his evidence, page 907:

"Q. You knew about the law requiring an itemized report of your fees that you received? A. Yes, sir.

Q. Have known about it since you have been in office? A. I think so.

Q. You knew about the law which required you to pay over the amount of fees received by you, after deducting the amount to the treasurer, semi-annually? A. I presume so.

Q. When you made your report of fees in the years '65, '66, '67, did you know that you were violating the law in the manner in which you made that report? A. Well, I knew I didn't make the items of the amount of fees, of course.

Q. Did you know that you were violating the law when you made that report? A. Technically, perhaps, I did.

Q. Did you know, sir, that you were not reporting the full amount of fees that you had received during those years? A. I did.

Q. You did know it? A. Yes, sir.

Q. Did you leave that part out of your affidavit purposely, the part that—did you leave out any statement from your affidavit purposely, to the effect that you did not receive any more than you reported? A. I made that affidavit for the reason I had never kept a book of fees as mentioned in the law, and therefore could not swear that those were all the fees I had received.

Q. You left that out purposely because you could not swear that that sum you reported was all that you had received? A. Of course I had an object."

Senator MURPHY—What year is that?

Mr. STANTON—This is the three years, '65, '66 and '67. Further upon pages 908 he testifies—

Mr. E. H. PRINDLE—There appears to be some testimony left out there.

Mr. STANTON—There is evidently something left out there; what it is I do not know. Upon page 908, it is probably evidence in reference to what he examined in order to make his reports; further upon page 908, I will read:

"Q. You made your report less than the amount you had received, purposely? A. I made my report for the full amount I had received of fees, after deducting the expenses that I considered the county should pay, and so I explained it to the board at the time; the committee.

Q. Did you go to the board? A. Yes, with the exception of '64; I made an itemized report, and in '65, '66 and '67 I did not.

Q. What became of the money which you had collected as fees and failed to report in those years? A. When I received any fees, of course I spent it as I went along; had to live.

Q. Then you reported about what you thought the county ought to have? A. In the affidavit I drew, I wanted to draw one that I could swear to truthfully.

Q. You failed to report the full amount of fees you had received, then, purposely? A. I state the fact; I knew I hadn't reported the full amount of fees in those years.

Q. You have always kept, since you have been county judge, a memoranda of the cash received? A. I have not.

Q. Haven't you kept a memorandum book of the cash received and cash paid out, and been very particular about it too? A. No, sir, I never have."

Then at page 909 at the top of the page:

"Q. Didn't you know what the resolution of the board of supervisors was in reference to expenses? A. I did.

Q. You knew the salary was fixed during the years 1865, 1866, and 1867, at $1,000, and $400 clerk hire, and that the $400 was to be in lieu of office hire and office expenses? A. I understood what the resolution was, of course; there was an office provided.

Q. You never hired any office at all? A. The first year I occupied an office awhile, my law office; they were repairing or fixing the surrogate's office, and after that I brought the records from Oxford to Norwich; I put them in the court-house, and occupied for that purpose the supervisors' room; I think toward the close of the year that I moved into the surrogate's office."

Then at page 910.

"Q. You knew about the law of 1869, which required you to charge, for the use of the county, for the certified copies of papers given by you? A. I did; I know of that law.

Q. You mean, kept a book of fees from the time you went into office? A. No, sir; never did, nor my predecessor.

Q. Did you make any report under the law of 1869 for the certified copies of papers? A. I didn't until last fall.

Q. At what time last fall? A. During the session of the board of supervisors.

Q. It was after you had served upon you the subpœna for appearance before the board for investigation of this matter? A. I don't remember.

Q. Then you reported how much? A. $25.

Q. Have you ever paid that to the county treasurer? A. No, sir; he has never paid me the quarterly salary; one is deducted from the other, of course; there has never been any payment of fees to the county treasurer at all.

Q. Have you ever kept an account of the certified copies of papers, and the number of folios each which you have given from your office? A. No; I swear positively that I have not received the sum of $25 since the passage of that act.

Q. Who has received the pay for certified copies mostly? A. Whenever lawyers wanted any copies of papers they made them themselves, and I signed the certificate.

Q. Haven't you had a great many copies made by Ray? A. I don't remember; he speaks of this one case; that is the only one that I remember that I have ever had copied.

Q. Who has usually attended to that part of your business, the giving of certified copies during the time since the passage of this act of '69? A. No particular person; when lawyers have brought papers there I have signed the papers, and they paid nothing for it."

Then, again, at the bottom of page 915 in the respondent's evidence:

"Q. These returns of yours to the board of supervisors, that are claimed to be defective, in which you claim to have set off a part of your receipts, that you didn't return, against the expenses of the office; did the returns for those years contain any charges for the expenses of the office against the county? A. None, whatever, except in 1867; then I put it in; Mr. Plumb was mistaken when he stated in regard to what was said; what I stated to Mr. Plumb was, that the years previous I had kept back fees enough out of the report to pay these expenses, and that year I had reported the full amount and more too, and put in my expenses.

Q. In 1867, what items of expenses did you charge against the county in your bill? A. Well, I charged for fuel, postage, etc.; I couldn't remember now.

Q. Is that one of the years in which you made these defective returns? A. Well, I made that return all along; credited so much gross for the amount of fees received; but then I look over carefully the report of the fees, and reported some that had been paid previously; so that I reported more fees that year than I had received.

Q. You made your report in gross that year? A. I did.

Q. And you charged these expenses of the office against the county? A. Yes, sir.

Q. And you say, that although that account was made out in gross, you actually reported more than you received? A. I did, for I have examined it since.

By Mr. STANTON:

Q. Have you a copy of that report for 1867 with you? A. I have.

Q. A correct copy? A. Yes, sir.

Q. Will you produce it? A. I will (producing paper).

Q. Is this the original report? A. No, sir, a copy.

Q. You say that year you returned more fees than you actually received? A. I did.

Q. Did you make the affidavit that is attached here? A. I did make the same affidavit that I did in regard to the others."

Here follows the report put in evidence reporting $285 for all sums whatever received as fees and attached this affidavit:

"CHENANGO COUNTY, *ss.:*

H. G. Prindle, being duly sworn, says he has received the fees stated in the foregoing account; that the items for services and disbursements therein charged are as stated therein, and no part of the same has been paid except as therein stated.

H. G. PRINDLE.

Sworn before me, this 18th day of November, 1867,

EDGAR GARRETT,
Justice of the Peace.

Indorsed: County Judge Report, 1867. (Copy)."

While he swears that he had reported more than he had received in the year 1867, and this affidavit shows that he had received all that he had reported, he swears positively there that he had reported more than he received. He says in 1867 he reported the full amount of fees and put in sums paid subsequent to the last report, "and reported more than I had received too, and put in my fuel and other expenses." He testifies that the county on a settlement would owe him as though he had not, or ought not to have made a settlement from time to time when he made his reports, but the proof, senators, shows a far different state of facts from this which the respondent claims. For the year 1864 we have no proof of his report. The total amount which the respondent reported for fees received by him during the years 1865, 1866 and 1867, from all sources and on account of all matters, blanks as well as fees, is $1,274. From January 1, 1865, to April 25, 1867, the time that this act was passed abolishing fees, he issued

Letters testamentary, taxable	84
Letters of administration, taxable	83
Letters of guardianship, taxable	113

At the legal fee, if charged then alone, it would amount to	$1,752
Add for blanks charged for under a resolution of the board of supervisors, which Mr. I. S. Newton testifies was a dollar in each case.....	280
Total amount which should have been returned	$2,032
Amount unreported, thus far shown, by the respondent....	$758

To this should be added the amount received by him between Nov. 10th, say 1864, when his report for that year must have been made to the board of supervisors, and the 1st of January, 1865, which fees should be included in the report for the year 1865. Add, also, the fees received by him in 1867, between the passage of the act of April 25, and the time when it was received at the surrogate's office, which Ray swears was in June, July or August of that year. Add, also, the vast amount of fees which he must have received under the fee bill, which is quite extensive outside of the items proved by us. For certified copies of papers, issuing citations, appointing guardians ad litem, etc., etc., etc. That the actual amount of fees received by him from all sources exceeded by $1,500 the amount reported there can be, it seems to me, no reasonable doubt. An attempt to have proved the facts more fully than we have, would have involved endless labor. Enough is shown, aye, admitted by the respondent himself, to satisfy you of the manner in which the respondent has accounted to the people for the money of the county with which he was intrusted. How faithful he has been in returning it, always taking the benefit of a doubt to himself, and returning such an amount that he could swear he had received so much, but not putting it large enough that he could swear he had received no more, and in his affidavit he leaves out that fact that he hadn't received any more he leaves out that fact— that important fact— and for an object, so that he could swear to it. The other reports for the other two years will be found at pages 453 and 455 of the case. The Senate will see by looking at that, that he testifies falsely when he says he didn't put any of the expenses of the office in his account; that he had put in record books every year, and publishing terms of the county court in the State papers and record books in which all his accounts are kept, in which case he makes this same peculiar affidavit. We think those charges are fully proven. We are scarcely less amazed, however, at his conduct in boldly claiming that his false reports and his cheating affidavits, which were, for the purpose intended, no affidavits at all, were all right, than we are at the course of his counsel, who, to meet the

allegation of the charge, that these things were done with intent to mislead the board of supervisors, have called upon the witness stand three members of the board of supervisors, Isaac Plumb, Andrew Shepardson and H. G. Crozier, who testify that they were not misled, but that they knew and talked over among themselves the fact that the reports were false; that he had held back the county money in his pocket; but that they thought it was near enough right, and so let it go. What a specimen of official faithfulness among the supervisors of Chenango; under the example and teaching of the highest judicial officer of the county. How fearful must be those justices of the peace in the county of Chenango, who have never paid over the fines collected by them to the county treasurer as the law directs, at the prospect of an indictment and trial for retaining the fees in the court of sessions, presided over by this respondent, and the criminal business of the county.

What terror it must carry to them to think that they may be prosecuted in this court, presided over by this respondent, for offenses similar to their nature to those perpetrated by this respondent here, the highest judicial officer in the county. If this be regarded as a proper discharge of his official duties, what will all that vast army of officers, throughout not only the county of Chenango, but other counties of the State, say as to what they will do and what will be their conduct? Will sheriffs and constables be limited to the statutory fee, especially in that county where this respondent holds the criminal courts? but I will pass those charges.

The substance of the seventeenth charge is, that in August, 1868, the respondent took advantage of an old lady seventy-two years of age, and obtained $1,500 of government bonds of her, belonging to the estate of her husband, at about $130 less than their value; also, that he charged her doing the business. This in the year 1868, more than a year after fees were entirely abolished. The proofs of this charge I will briefly advert to. Mrs. Russell testifies on page 318 of the case:

"Q. Go on and state now what occurred both in conversation and in acts in reference to these bonds? A. Well, sir, there was but little said: after we got through I paid the judge, and there was something said about going to the bank, but what I can't remember; I have tried to think, but I can't remember what; but finally the judge said that he had money that belonged to orphan children, which he would like to deposit in bonds, and he would pay me the money and take the bonds for these orphan children; that is as near as I can recollect.

Q. Did you state to him where the bonds were? A. Well, I presume I did, but I couldn't certainly say; I have no doubt but what I did, but I wouldn't dare to say positively.

Q. Well, state what further occurred? A. He sent and got the money for me and paid over the money.

Q. How much did he pay you for them? A. He paid me $1,500 and the interest that had accrued from July up to that time; well, I was ignorant; I never once thought that—well, I was scared, to tell the truth and to expose my ignorance; I don't know that I thought of the premium at that time; I went before Judge Prindle feeling as if he was a storehouse of knowledge, and feeling that I had no part to act in it; I never thought but what it was all Judge Prindle's business; I was a poor old lady and had brought my poor husband's death in my mind of course, as you will admit; I felt just as though I had come before my superior altogether; a place where I never was; I considered him, as I said before, a storehouse of knowledge, sufficient for me and all other widows."

Then again at page 321:

"Q. You trusted entirely to Judge Prindle in this matter? A. Of course I did; I thought at the death of my husband all men were honest, pretty much; of course I did; I never transacted business with any one or had charge of it."

Then upon the 326th page:

"Q. Are you sure you paid a premium? A. Oh, yes; I know it.

Q. Did it occur to you then, when you went to dispose of them, that they might be worth a premium? A. I was not thinking anything about premiums at the time I sold them. I was thinking that this was surrogate business all the time. Now, that is the truth. I acknowledge that I am an ignorant old lady, but that is the truth, gentlemen.

Q. If you had thought of it, would you not have known that they were worth a premium? A. No, sir; I should not have let them go short of the premium.

Q. You don't understand me; you say you bought these bonds, and paid a premium for them? A. Mr. Hook did.

Q. And then I asked whether if you had thought of the premium that had been paid for them, you would have known that they were worth a premium? A. Why, I would have known if I had thought any thing about it."

Then again at page 326, in answer to a question by Senator Perry:

"Q. How soon after you sold the bonds to the judge, did it occur to you that there was a premium due upon them? A. I got into a wagon with my grandson; he says: 'Grandma, what have you done to-day?

Q. Did you then return and see the judge about it? A. No, sir; because I had made the bargain then, and I don't make any such child's bargains; I thought that if I had been so foolish, and so simple as to do such a piece of business as that, I would let it go to those orphan children and say no more about it, and I told my grandson not to mention it; not to expose his grandmother's weakness; I didn't even tell it to my husband at first; but, one day, he says to me: 'Esther, you are too slack in doing your business; you let every man do his own reckoning.' Says I: 'I thought everybody was honest when Mr. Hook died;' but, says I, 'I cut up one miserable caper, the other day, that I am ashamed of.' Says he: 'What is that?' And then I told him; but I told him, also, not to mention it; not to say any thing about it to anybody; now, gentlemen, you have the truth, if you will let me pass with that."

That is the testimony given by Mrs. Russell, the old lady 72 years of age, who went there to get her husband's will proved, and matters of her husband's estate settled. The respondent's own testimony in reference to the matter, I will also read. Commencing at page 878, he says:

"A. Mrs. Russell came to my office to prove her husband's will; she was Mrs. Hook at that time, I understood; I had never seen her before; she came there for the purpose of having her husband's will proved; I drew the petition for the proof of the will; examined the witnesses; issued letters testamentary to her as executrix; after the letters were issued, she stated that she had in the Bank of Norwich three five-twenty bonds of $500 each, and wanted to get the money on them; there was a young gentleman with her; I understood it was her nephew at the time, but since, that he was her grandson; he, she stated, wanted to go west the next day, and she wanted to get the money on those bonds that day if she could; I told her that there was a premium on the bonds, and she could send to New York and have them sold and get the premium on them; but she wanted the money on them that day; I told her I had invested some money belonging to infants and other persons in government bonds, but I had never paid a premium on them, and that I would not do so; if gold went down to par then I would get only sixty cents on the bonds."

Mr. E. H. PRINDLE—That should be six per cent, I guess.

Mr. STANTON—Probably. He continues: "These persons who were dealing in them could afford to pay premiums, but I could not do it; and she said that if she could sell them she would sell them for the face of the bonds without the premium and the accrued interest; I told her I had not any money on hand at the time; but I thought I could find a person who had the money who would purchase the bonds; previous to this time I had a mortgage on a tannery that I sold to a man by the name of Ira Dibble, there in the village of Norwich; when the mortgage came due, I urged payment of the mortgage; I wanted to invest it in government bonds; he was not able to make the payment, and he agreed that if I would extend the time of the payment, if bonds were at a premium, he would pay me in these five-twenty bonds, paying the premium himself; and I thought of him at the time I made this remark; I went and found Mr. Dibble and told him there was an opportunity where he could get $1,500 of those bonds at par, if he could raise the money; he had not got the money himself and he said he would go to the bank and see if he could get the money; he went to the bank and they agreed to let him have the money if I would indorse the note; and I indorsed the note at the bank and he paid me the money; I went back and paid her the $1,500 and—well, whatever the face of the bonds and the accrued interest was; I think it was $10 or $15."

Again, at page 879, he says: "I had no interest whatever in those bonds; Mr. Dibble was the only man really interested; he was to procure the bonds and pay them to me on this mortgage; he was to pay the premium.

By Senator D. P. WOOD:

Q. He was to furnish the bonds to you at their face? A. Yes, sir; he was to furnish them to me at their face in consequence of the extension of time."

At page 895 he testifies further in reference to this matter:

"Q. You say that you drew the papers for Mrs. Russell? A. Yes, sir."

After being cross-examined for several questions:

"Q. Is that as strong as you can swear? A. I heard her swear she paid $12, but I have no entry of the kind, and my recollection is to the contrary.

Q. Can you swear any thing stronger than what you have already sworn? A. No, sir."

That is, that he would not swear positively but that he charged her $12 for doing the business, issuing the letters, etc. At page 896 again:

"Q. Did you purchase those bonds, at the time you purchased them of Mrs. Hook, for or on the account of any infants? A. No, sir; I expressly told her I hadn't any money; the only thing said about infants was that I had previously invested in government bonds money in my hands belonging to infants, but never had paid the premium.

Q. You know there was a premium upon the bonds at the time you purchased them of her? A. Yes, sir; I knew it.

Q. Did you know about how much premium there was? A. No, sir; I did not even look at the papers.

Q. You knew these bonds belonged to the estate of Benjamin Hook? A. I knew they did not; by the will she was given every thing; she stated to me the fact that they belonged to her.

Q. Belonged to her how; under a will? A. Yes, sir.

Q. You knew they had belonged to the estate of Benjamin Hook? A. Yes, sir.

Q. Had there been any inventory of the estate returned to you at that time? A. No, sir.

Q. Did you know any thing about the amount of the indebtedness of the estate at that time? A. She said to me there were no debts."

At page 897 he says, in reference to the Dibble mortgage:

"Q. How much had he given you in notes for the purpose of carrying that mortgage? A. Not a farthing.

Q. You say he had never given you a note for $600? A. No, sir; never.

Q. For the purpose of carrying that mortgage, in addition to the legal interest? A. No, sir, not at all; after this, when he wanted to have a settlement between us to ascertain the amount due upon the mortgage, then he gave me this $600 note, and this amount, paid for these Hook bonds, was deducted at the time in ascertaining the amount due and the premium; we looked through and found out how much it was, and he gave me a note for the premium; I wanted the matter settled up; if he was not going to furnish the bonds I wanted the money or something to show for it."

At the bottom of the page:

"Q. Explain a little more definitely what that $600 note was given for? A. I say it was given upon the settlement there at the time.

Q. For what consideration? A. I think when we figured up the matter there was from $800 to $1,000; there was over that amount of that note in premium."

Then over the leaf on page 898:

"Q. This note was given for the amount that the premium would amount to upon government bonds, if he had purchased them at their full value in the market, wasn't it? A. Yes, sir; and in this settlement, this $1,500, whatever it was that was paid, was taken out."

Now, at page 899 he says:

"Q. You did not regard Dibble as having any interest in them there? A. Not at all; Mr. Dibble had my receipt.

Q. Receipt for what sum? A. For this money.

Q. For the money that he had paid upon the note at the Bank of Chenango, wasn't it? A. I gave him a receipt stating, received of him so much, a note indorsed by me, to be indorsed on his mortgage when the note was paid, and it was subsequently paid."

Now I call your attention particularly to this evidence, that after the respondent has gotten up this manner of excusing the purchase of these bonds, saying that he didn't purchase them for himself but for Dibble, he goes out and gets a note of Dibble to raise the money to purchase the bonds, and says he gives Dibble a receipt, that the note is to be indorsed upon the mortgage when paid; does that show that he bought the bonds for Dibble; does that show that he indorsed the bonds upon the mortgage for Dibble? There is the receipt to which the respondent himself testifies; now he expressly testifies here at page 879, that these bonds were to be paid to him at their face in consideration of extending the time of this mortgage. Now it seems to me to be proper to read a little of the usury law.

Mr. E. H. PRINDLE — Is that a new charge?

Mr. STANTON — No, he proves it against himself.

Senator LEWIS — I guess we all understand the usury law.

Mr. STANTON — I suppose so; but that law makes it a misdemeanor for any man to receive, in consideration of a loan of money, any thing of greater value than seven per cent per annum, and makes it an indictable offense for any man to do it, and this respondent comes here to defend himself on this charge, and swears himself guilty of usury in order to defend himself. What was this agreement with Dibble, assuming it to be true, good for in law? Was it not utterly void under the usury law? The respondent could not enforce it. Does this explain his disinterested desire to help Dibble get his bonds? Again, Dibble had agreed, he

says, to buy the bonds, paying the premium upon them and pay them upon the mortgage at their face. Why, then, if Mr. Prindle bought the bonds for Dibble, as he says, should he have objected to paying the premium to Mrs. Russell? He swears he did, though Mrs. Russell says nothing was said about the premium. Does that fact, that he told her that he could not pay any premium, show that he bought them for Mr. Dibble? Why did not the receipt which he gave Dibble upon the mortgage acknowledge the receipt of the bonds at par, if they were bought for Dibble and paid to Prindle upon the mortgage, instead of the receipt being for the note which Dibble gave him, to be indorsed when paid? Every fact about this transaction, except the bare assertion of the respondent, shows that they were not purchased for Dibble at all. Does he claim that Dibble's name was mentioned in the negotiations with Mrs. Russell? Not at all. And Mrs. Russell swears he told her he had some money to invest for infant children, and wanted the bonds for them. But suppose this story of Mr. Prindle's is entirely true, that although he did withhold from this old lady about $130, which was her due, he did not do it for himself, but he did it for Ira Dibble. He, the surrogate, holding the court, which in many of the States is termed the widows' and orphans' court, did not rob this old widow on his own account, but did it for Dibble; he, Prindle, securing the profits. Is this an answer to the charge? And yet it is all the answer the respondent makes. Suppose a prisoner, on trial, upon an indictment for stealing a horse, proves that he did not steal it for himself, but he stole it upon an agreement with his brother, that his brother should own it, letting him have the use of it. Is that a good defense? Are you not strongly impressed, senators, with the peculiar qualifications and fitness of this respondent to administer the criminal law, especially the usury law, the provisions of which he must charge to every grand jury, the same as the law relating to extortion, after listening to the defense upon this charge, setting up a usurious agreement with Dibble, which, to help Dibble carry out for the benefit and profit of himself, he did the act charged, admitting incidentally that he received over $800 of usury money upon the same agreement afterward?

But, says the respondent, as a further defense, I told this woman I would not pay her any premium, and she made the trade with full knowledge of what she was doing. That Mrs. Russell denies, and I think no man who saw the old lady upon the witness stand, observed the clearness with which she gave her evidence, her candor, her earnest desire to say nothing that she simply thought was so,

but did not remember positively, could for a moment believe that she made that sale, understanding that she was throwing in the premium. She knew her husband paid a premium on them when he bought them. But admit even that position for the sake of the argument, is the surrogate placed in the position he is by the people, and paid a salary for the purpose of driving sharp bargains with the widows who, while overwhelmed with grief and mourning, seek the advice and counsel of the judge who presides over the court organized for their protection? He knew that the bonds belonged to the estate of Benjamin Hook, upon which he had that day issued letters. He knew that he obtained the bonds from that estate at less than their market value. Suppose he did do it with the consent of the executors, is that any excuse? Had a bargain of that kind been drawn with this old lady by any note shaver or money lender in the county, holding no official position, and authorized as every man is to draw the sharpest bargain he can, within the law, a healthy public sentiment would condemn the man as a Shylock. What language, then, can characterize the act when done by a judicial officer whose position is created for the purpose of seeing that the widow and orphan are protected in their rights. He commenced the business with this old lady by extorting out of her a fee of $12, for granting letters upon her estate, $3.50 of it being for stamps. That he did it purposely there can be no question. He does not claim ignorance of the law abolishing surrogates' fees. That he did exact it Mrs. Russell swears, and he does not himself deny. Even Ray, surprising as it may seem, is not on hand, as usual, to cloak this transaction, and throw that flood of light upon it which his marvelous memory has cast upon most of the other matters detailed in the evidence. Is the officer who could deliberately rob this old lady of even $8.50, too honest to take the $130 in premium as she says he did take it?

The proofs upon this charge seem to me perfectly conclusive, and the defense too flimsy for serious consideration.

Upon the eighteenth charge we have no proof.

The nineteenth charge is for the extorting of an illegal fee of $8.85 from Charles Todd, as executor of the Charles E. Jacobs estate.

While Mr. Todd details the circumstances fully, commencing at page 415 of the case, there is no denial or explanation made, except the usual one by Ray, that the money was collected by the judge for him and afterward paid over, his memorandum showing, however, that only six dollars was paid to him, thus leaving a small margin

in the judge's hands. Of course Mr. Ray thinks his memorandum is wrong. I read from his evidence, page 801:

"Q. How much did you say that you received of him on account of your services in the case of the Charles E. Jacobs estate? A. We said this: That my account book says six dollars; I know that Judge Prindle paid me; we made a mistake; I know Judge Prindle passed me every cent of money, together with the dollar stamp.

Q. Passed you every cent of the money; what do you mean by that? A. That Mr. Todd gave him.

Q. How do you know that? A. Because I saw it done; Judge Prindle said, I cannot give you the precise amount of money; Judge Prindle says, I could allow the special guardian in this case ten dollars; but I will not do it; he says, give him so much money and call it all right, or call it square, or words to that effect, and Mr. Todd gave him some money; laid it on the desk and Judge Prindle picked it up and laid it on the desk in front of me.

Q. You think you know the amount better than Todd? A. No; I think if Mr. Todd swears he paid Judge Prindle $8.75, I think Todd is correct, and I think I made a mistake when I came to make the memorandum in my book.

Q. You think you must have received more than you credited Judge Prindle? A. I didn't credit Judge Prindle with a cent; I credited Mr. Todd with the money; it was not paid to Judge Prindle, only for me."

In opposition to this I shall call your attention a little to the evidence of Todd himself, at page 420:

"Q. Did you know at that time that fees were abolished? A. I did not.

Q. Supposed they were not? A. I supposed they were not; I had done business before the fees were abolished, and knew what they had formerly been.

Q. What was the date of this transaction? A. The 10th of June, 1871.

Q. State the rest of the conversation? A. He said then 'the law would allow me $10 for the special guardian; but as Mr. Jacobs is an old friend, I won't charge that.'"

The law would allow him $10 for the special guardian! Where in the world does he get a law of that kind? allow *him, the surrogate*, $10 for the special guardian; "but as Mr. Jacobs is an old friend, I won't charge that; he placed the stamps upon the papers and the papers were completed, and I left his office.

Q. Did you state that you found the stamps? A. I paid for the stamps and handed them to him at the office.

Q. Did you pay for the stamps aside from the eight dollars? A. Yes, sir.

Q. Did you pay Judge Prindle? A. I did.

Q. Did you take a receipt for the eight dollars? A. I asked him for a receipt and he said it wasn't necessary."

And in a great many other cases that we have proved through here, the executor has asked for a receipt, and he has in almost every case refused to give them, but sometimes giving them *and signing Mr. Ray's name to it.* Mr. Ray, in this case, does not figure as attorney, Mr. Todd having had the papers drawn by a lawyer in New Berlin before he went there, but he did the surrogate's clerical work, and I call your attention to that at page 761 of the case, and it has a little further bearing upon this question in reference to whether Ray was clerk or not. Ray, in giving the details of this transaction, near the top of page 761, says:

"Judge Prindle asked him if he wanted a copy of the will, and he said he did; I made a copy of the will; that is my recollection; I made a copy of the will and acted as special guardian."

And below he says:

"I sat at the table fixing the probate, as we call it; that is, a copy of the will which is issued after the proof of the will; it is for the convenience simply of the executor, to have it to refer to and use in evidence; it is no part of the proof of the will; not connected with the proof of the will; it is simply a paper issued afterward, for the convenience of the executor."

I read that for the purpose of showing that he did the surrogate's work in that matter — his clerical work — and, of course, it was necessary that Ray should get his pay in some way, so he figures in the character of guardian *ad litem*, and although Prindle then claimed that he could charge $10 more for that at the time, it is now claimed that it was on account of that that the money was demanded. What business has the respondent demanding money for a guardian *ad litem?* Before fees were abolished the law read like this:

"Appointing a guardian to defend an infant who shall be a party to any proceeding, fifty cents; but where there is more than one minor of the same family, and the same guardian is appointed for all, twenty-five cents for each additional minor; *and no greater or other fee shall be charged for any service in relation to such appointment.*

I say, what business has the surrogate to demand this fee? The services of a guardian *ad litem* are, except in extraordinary cases, merely nominal. In some counties it is the practice for the county clerk to act as such without charge. It would be easy for the surrogate to obtain a perfectly competent person to do the duties faithfully for two dollars, in a case; shall he be allowed to collect what he pleases himself, ten dollars, if you please, and then to pay what he pleases to whomsoever he has appointed; as in this case, dividing the money with his clerk? And the proof shows that out of eight dollars and seventy-five cents, only six dollars was paid to Ray. Should he collect money, ten dollars in a case, and then get a special guardian, or guardian *ad litem*, to act as cheaply as he may? Is this to be tolerated? Do Supreme Court judges personally attend to collection of these fees, or simply grant an order and let the guardian *ad litem* attend to the collection himself? We regard this charge as fully proven.

The twentieth charge is admitted, except that Ray claims that he did it in the absence of Judge Prindle, and the judge knew personally nothing about it. That is Ray's evidence. Perhaps we have failed in bringing this case home to the knowledge of the respondent. If, however, Ray, who had been instructed by the respondent in reference to the business and in charge of his business during his absence; if he, as a clerk, made this illegal charge, which he himself testifies, he did charge about $1.50 more than the legal fees. I say, if Ray did so act, his relations were such that he was countenanced in it by the respondent, then the respondent is responsible, and that is a subject for the consideration of the Senate.

The twenty-first charge is for demanding ten dollars of J. M. King on granting letters.

Senator BENEDICT—You don't refer to any proofs under the twentieth.

Mr. STANTON—I have, pages 762 and 763, under the twentieth charge, and 479 also. On pages 762 and 763 is the evidence of Ray himself. He says that the legal fee allowed to the surrogate for copies would amount to between eight and nine dollars. "I charged him a little more than that fee would be actually." That is Ray's own evidence.

Senator BENEDICT—Now, the next charge, the twenty-first, I think you said--

Mr. STANTON—Yes, sir; you will find the evidence of Mr. King at pages 465 and 466, and the evidence of Mr. Ray, upon that charge, at pages 763 and 764. I have already made some remarks

in reference to the proof under this charge in discussing the first charge.

The twenty-second charge is for an attempt to extort an illegal fee, which was not successful. By adverting to the law relating to extortion, it will be observed that the attempt to extort, equally with extortion itself, is an indictable offense. The sustaining evidence is that of the executor, pages 476, 477. The only defense to this charge is the evidence of Ray, pages 764, 765, 766.

Senator D. P. WOOD—Which charge?

Mr. STANTON—The twenty-second charge.

Senator BENEDICT—What page?

Mr. STANTON—764 and 766, that is the evidence of Mr. Ray, and the evidence upon the part of the prosecution upon that charge is found upon pages 476 and 477. As I desire to pass over these as rapidly as possible I will not read all this in reference to extortion. We claim they are proved, and by merely calling your attention to the pages I will pass on.

The twenty-third charge is also one of extortion. The evidence on the part of the prosecution you will find at pages, 471 472 and 473. The only evidence for the defense on that charge is also the evidence of Mr. Ray at page 766.

The twenty-fourth charge is still another specification of extortion. The proof on our part is the evidence of the executor himself, pages 579, 580, 581, and in answer to a senator at page 582. The only defense in this case is the evidence of Ray, who testified that he was employed by a co-executor, and contradicts directly the evidence of Mr. Furman, on 768.

The twenty-fifth charge is one similar to the last. Mr. Gregory, the executor's evidence, is at pages 439, 440, 441. The only defense is Ray's evidence at page 807.

The twenty-sixth charge is also similar to the last. Mr. Eddy, the executor's evidence, is on pages 497 and 498. The answer made to the charge consists of Ray's evidence, as usual, at page 808.

Mr. GLOVER — You are mistaken in regard to that, I guess; Mr. Ray's evidence is at page 770:

Mr. STANTON— Upon the twenty-sixth charge?

Mr. E. H. PRINDLE — Yes, sir; the twenty-sixth charge, it is at 770.

Mr. STANTON — Twenty-sixth charge; Mr. Ray's testimony commences on page 769; he also testifies at page 808.

The twenty-seventh charge is another of the same character. The evidence on the part of the prosecution is at pages 465 and 470.

The only evidence for the defense is at page 763, or commencing there.

The twenty-eighth charge is another of the same character; the evidence for the prosecution is at pages 465 and 470, and for the defense at page 768.

The twenty-ninth is another; the evidence for the prosecution is at page 431, for the defense at page 808.

The thirtieth is another; evidence for the prosecution commences at page 463, defense can be found upon pages 743, 763 and 500.

The thirty-first charge is another; the evidence for the prosecution commences at page 463, that of the defense at 773, 809 and 832.

The thirty-second charge is another; evidence for the prosecution at pages 300, 310, and 317, for the defense at 773, 810 and 811.

The thirty-third is another of the same class; the evidence for the prosecution is at pages 505 and 509; defense at 775 and 812.

The thirty-fourth charge is still another; the evidence for the prosecution at page 523, for the defense at page 776.

The thirty-fifth charge varies somewhat from these, as a charge of extortion, and I would like to dwell a little upon it. It alleges that the respondent demanded $5 from Mr. Fuller, an attorney, for what he called "disbursements" upon an accounting of a guardian before him. Mr. Fuller testifies, at page 392, as to the institution of the proceeding, that it was in the spring or summer of 1869. He says:

"A. It was to call the guardian to an accounting; the petition to call him to an accounting was presented some time in the spring or summer; I don't remember the date, and after the return of the citation to Mr. Myers, the pleadings were put in on the charges against him, and it was adjourned some twice, I think, and the last time it was adjourned to the 19th of November, I think, the day after Thanksgiving, on which day we appeared before Judge Prindle with our witnesses, and I was assisted by Isaac S. Newton, and the guardian, Mr. Myers, was aided by Mr. Atkins, of Sherburne, and Mr. Ray."

After the accounting was had, he testifies, in the middle of page 118: "After that I received a letter from him one day in which he stated —

Q. Have you got that letter? A. No, sir.

Q. What became of it? A. I cannot tell.

Q. Have you searched for it? A. Yes, sir.

Q. And you are unable to find it? A. Been unable to find it.

Q You may state the contents? A. That letter stated that he made an award in the matter by which he awarded the ward $200; each party to pay their own costs, and then he said, 'I want to have you save five dollars for me for disbursements,' etc; the next day I was at Norwich, and I took that letter down and first showed it to Isaac S. Newton, and then I went over to the surrogate's office and handed Mr. Prindle five dollars, which he took.

Q. Well, sir, what disbursements did the surrogate have in that case? A. I am not aware he had any.

Q. Did you receive any certified copies of papers from him, or any thing of that kind? A. No, sir.

Q. Any further papers than the letter? A. That is all.

Q. You had some talk with Judge Prindle in reference to this matter afterward, didn't you? A. Yes, sir; last fall.

Q. Previous to the nomination or subsequent? A. Subsequent to the nomination; that was when he and Mr. Thompson came to Sheburne to talk up the matter with the republicans.

Q. State what conversation you had with him at that time? A. A number of republicans met in my office to talk over this matter, and Judge Prindle then made some remarks, in which he charged me for being ungrateful for taking any measures against him; that he had always favored me, and so on; and then the question of this Myers matter came up, and I stated the facts in the case, and in reply to that he said that he couldn't explain the matter then, but if he was at his office he could make every thing all clear; that the charge was made for doing some sort of recording, or something of that kind; he couldn't tell exactly for what the five dollars was charged, but that he was all right; then at the close of the day, and just as he took the cars to go home, I was in the post-office helping sort the mail, and he called me out, and he there told me that if I was a mind to take hold and quiet this thing up where it was that it wouldn't go any further in the town of Sherburne, and urged me very strongly to do it; he told me then that if I would do this that I never should ask any favor of him but what he would grant it, and he reminded me that he had decided several matters in my favor, and on the ground of the benefits he had done me, claimed that I ought to do what I could to quiet this matter up so that it shouldn't go any further.

Q. Did you hear him make a statement in reference to this transaction in a public meeting in Sherburne? A. Yes, sir.

Q. Did he there state that he also demanded and received five

dollars from Myers, the guardian? A. I don't remember his making that statement there.

Q. Do you recollect of his admitting that statement in answer to a question whether he had charged him? A. I think in that meeting that Mr. Myers told me that he had demanded five dollars of him, and that Myers had paid it."

Mr. E. H. PRINDLE — That is evidently a mistake. Myers was not at that meeting, you know that yourself.

Mr. STANTON — I do not know.

Mr. E. H. PRINDLE — I know he was not there, and there was no such evidence given; there was no pretense that Myers was there.

Mr. STANTON — I don't know I am sure; but that is not very important.

Mr. Newton testifies, page 397:

"Q. Did you have any papers from the surrogate in the case? A. No, sir; all I did was to lay the case; he testifying that he received no papers, and Mr. Fuller testifying that he received no papers, those two being the only counsel who could have received any."

Senator BENEDICT — What did you say about there being something wrong?

Mr. STANTON — I will read it to you:

"Q. Do you recollect of his admitting that statement in answer to a question whether he had charged him? A. I think in that meeting that Mr. Myers told me that he had demanded five dollars of him, and that Myers had paid it.

Q. What reply did he make?" That, Mr. Prindle says, is wrong.

Mr. E. H. PRINDLE — I was there at that meeting and I know Myers was not there; it is some mistake; I don't know how it occurred.

Mr. STANTON — This charge is nowhere alluded to by the respondent or by any of his witnesses; it is left precisely as it was proved on the part of the prosecution; he claimed to be able to explain it, but nothing has been said in explanation, and, of course, it stands confessed as matter of proof before this Senate.

Under the thirty-sixth charge we offer no proof, the principal witness in that case having met with an accident, which prevented his attendance.

The thirty-seventh charge is another one of demanding and taking illegal fees; the proof for the prosecution, page 656 and for the defense at 460.

Upon the thirty-eighth charge they offer no proof whatever, having made no reference to it in any of the evidence they have ad-

duced, and that, too, is left as proved by the prosecution, at pages 526, 527 and 528. I will read from page 527 a little of the evidence of the administrator, as it is somewhat different from the other charges. He went to the surrogate's office for the final settlement of his accounts as administrator in two estates, and was accompanied by one of the respondent's counsel here, Mr. Glover, as his attorney:

"Q. Now go on and state what occurred there in the surrogate's office from that time until the time you left? A. After the parties went away that he was drawing the deed for, then Mr. Glover made a statement of our settlement, as he had a statement; he had the account, and Judge Prindle drew it off on his book.

Q. The account in both estates? A. Both estates.

Q. Both settled at one time? A. Yes, sir.

Q. Go on; you say that Judge Prindle took the account drawn; made a summary of it, did he? A. Yes, sir; he drew it off on to his book.

Q. Was there anybody else present at that time, or who was present? A. There was no one present but Mr. Prindle, Mr. Glover and myself.

Q. You were there about an hour? A. About an hour, I should think; yes, sir.

Q. State what occurred with reference to the payment of money? A. After they got through, or nearly through, Mr. Glover told me to pay Judge Prindle twenty dollars; I did so.

Q. What was stated about the amount you were to pay Mr. Glover; any thing about that? A. Judge Prindle asked Mr. Glover if $100 would satisfy him for his services; he said it would.

Q. Now, sir, state what occurred immediately preceding this statement in reference to going into the back room? A. Judge Prindle went off; he was taking the account off on his book, and he left and went off to an adjoining room, and I heard him speak, and Mr. Glover went out.

Q. What did he say? A. I couldn't tell what he said, but I heard him speak, and Mr. Glover went out; I couldn't say that he spoke to Mr. Glover positively, but Mr. Glover went out after he spoke.

Q. Did they go into the back room together? A. Yes, sir, they were out in an adjoining room.

Q. How long were they gone? A. About ten minutes.

Q. What was the first thing that was done or said when they came out? A. They came back; Judge Prindle went to his desk

and took up a pen, and he then turned around and asked Mr. Glover if $100 would satisfy him for his services; if it would be enough; I don't know that I recollect the exact language.

Q. Was that the first mention that was made at that time of the amount which he was to receive? A. Yes, sir.

Q. The amount stated by Judge Prindle himself? A. Yes, sir.

Q. State what further occurred? A. After that, Mr. Glover said I must pay Judge Prindle twenty dollars.

Q. Did he state what it was for? A. No, sir, not to my knowledge.

Q. Had any one been in the office from the time these parties left and the time you commenced this business but these three persons? No, sir, not to my recollection.

Q. Did any one appear there during that time as special guardian, or guardian *ad litem*? A. No, sir.

Q. Not from the time you commenced until the time you concluded? A. No, sir.

Q. You paid the twenty dollars to Judge Prindle, did you? A. I did.

Q. Did you get a receipt for it? A. No, sir; I didn't ask for it.

By Senator PERRY:

Q. Did the judge allow $100 in that matter? A. Yes, sir.

Q. Did you pay it? A. Yes, sir.

Q. To whom? A. I paid it to Mr. Glover.

Q. Then and there? A. After we got back to Oxford village, I paid it to him, and took a receipt."

It seems from this, that at the suggestion of the respondent, he and Mr. Glover had a private interview away from the executor, and immediately after coming into his presence the judge fixed upon $100 for Mr. Glover, and Glover fixed upon twenty dollars for the judge, and ordered the executor to pay it, which he did. There is no proof whatever on this subject; there is no proof whatever of what became of the money or what has become of it, except the saving clause in Ray's testimony, that the judge always paid the money to him; that he paid it in this case does not appear or under what pretense, for the evidence shows nobody was present when the business was done, except the executor, Judge Prindle and Mr. Glover, and thus this charge is left.

The thirty-ninth charge is for demanding thirty-five dollars of the executor on the final accounting of the Milner estate. Mr. Mitchell appeared with his counsel from outside of the office. His testimony

will be found at page 433. The letters were issued in 1867: I read from Mitchell's testimony, the executor, at page 434:

"Q. You had a final accounting of that estate subsequently? A. Yes, sir.

Q. When was it? A. 22d of May, 1871.

Q. Who went with you to the surrogate's office on that final accounting? A. Mr. George W. Marvin.

Q. Is he an attorney at law? A. Yes, sir; Andrew Shepardson, present member of Assembly from our county, and Leroy Sweet.

Q. You had employed Mr. Marvin to make out your account as executor, had you? A. I had, sir.

Q. The final accounting was held on that day, was it? A. Yes, sir.

Q. What did you do afterward; state what was said in reference to the payment of any money as fees? A. Judge Prindle asked me for his fees; he said they were thirty-five dollars; I paid him thirty-five dollars; I asked him twice for a receipt and he didn't give any.

Q. Did he decline to give you any receipt? A. He made no answer to my request.

Q. Did he state what the services were for? A. No, sir; he did not.

Q. Was there any contest over the proof of the will? A. There was not.

Q. Was there any contest upon the final accounting? A. There was not.

Q. Who furnished the stamps that were used at the time of granting the letters of administration? A. I paid them myself.

Q. How much were they? A. Ten dollars.

Q. What was the value of the estate? A. We estimated it at the time at $20,000.

Q. Was there any citation published in the State paper? A. No, sir; there were no heirs out of the State; there were but three heirs."

On page 436 he testifies:

"Q. Who drew the papers for the proof of the will? A. Judge Prindle directed George W. Ray—

Q. George W. Ray drew the papers? A. Yes, sir, at Judge Prindle's request."

The only defense to this charge is Mr. Ray's evidence; that will be found at page 778. I will read a little from that:

"Q. Who drew the papers for the proof of the will in the Thomas Milner estate (39th charge)? A. I drew them; Mr. Mitchell and Mrs. Milner came to the office, in the absence of Judge Prindle, and spoke about proving this will; that was before I was admitted to practice as an attorney, while I was in the office there; and I drew the petitions then and there."

A little further down he says:

"On the proof of the will I acted as special guardian to two infants; I think it was within a few days after that, within a month at any rate, that Judge Prindle paid me; I think the way it came up was, I wanted to go away somewhere and wanted some money; Judge Prindle said I was entitled to pay as special guardian and for drawing papers in that matter, and he gave me $20; he said when he collected his fees he would collect the money; it ran along and I never heard any thing more of it until the final settlement; I know Judge Prindle dunned Mr. Mitchell for his bill; presented a bill for $35; and Mr. Mitchell paid it; I had nothing whatever to do with the final settlement; there was another attorney engaged in the matter."

There is further evidence of Mr. Ray at pages 813 and 814, to which I call your attention, but I will not read it. In this case it will be observed these wills were proved before the fees were abolished. The statute you will recollect required all fees to be collected by the surrogate in advance. You will also recollect, that in his affidavit he invariably swore *that he had received the fees returned*, as the proof shows he had not then received the fees in this case and of course they were not returned and he collects them to the tune of $35 in 1871. He has never returned them since as the proof shows. How many other cases similar to this may have occurred we are left only to conjecture. But with the looseness and carelessness, shown by the evidence, with which the county money was handled in this office (always, however, to the pecuniary advantage of the respondent), we cannot believe that this was an isolated case. Ray says, however, that the judge has accounted for $20 of the money and that he paid that over to him, for acting as guardian *ad litem*, on the proof of the will before he was admitted to the bar, and while, even, he admits that he was clerk of the respondent.

The fortieth charge alleges the taking of $15 from the executor on the proof of the will in the Ferguson estate. I call your attention to the receipt which was put in evidence in the case, found at page 579:

"$15.00.

Received of Ira Watson, 2d, one of the executors of the last will and testament of James Ferguson, deceased, fifteen dollars, expenses and disbursements, appearance, special guardian, etc., in the matter of the proof said will.

Dated NORWICH, *September* 5, 1870.

GEO. W. RAY,
for H. G. PRINDLE."

I call the attention of the Senate more particularly to the signature of George W. Ray for H. G. Prindle. The executor testifies on the preceding page. He says:

"Q. Who was the business transacted with? A. I did my business with Judge Prindle, what I did; Mr. Ray did the writing.

Q. How did he come to do the writing? A. I couldn't tell you.

Q. Did you request him to do it? A. I didn't; didn't know the man.

Q. What was the value of the estate? A. The estate wasn't a great ways from $4,000; it is not settled up yet, so that we can tell.

Q. How many heirs were there to the estate? A. One.

Q. That was the child of Ferguson? A. Yes, sir.

Q. His widow was still living? A. Yes, sir.

Q. Where did that child reside? A. Resided in Smithville.

Q. And the widow, also? A. Yes, sir."

Ray, in his desire to make the matter appear perfectly consistent, don't think the receipt reads "*for* H. G. Prindle." I wish we had that receipt here. It seems the State printer, when he came to print the case, had no hesitation in putting it in "*for* H. G. Prindle;" and, if I could read writing, it was as plain as any thing; Mr. Ray writes and his writing is very clear and distinct; and yet, although Mr. Ray don't think it was "*for* H. G. Prindle," he goes on to say how he came to write it so. And I call your attention to his evidence (page 789). He says;

"I think Judge Prindle told him how much to pay me for my services as special guardian in this matter on the statements and other services in addition to that; when I gave the receipt I signed my name to it alone and he objected to taking it; he said the surrogate took it, and Judge Prindle was the surrogate, and he did not employ me, and he wanted a receipt from the surrogate; I told him that the money was not for the surrogate, and that the surrogate was not the special guardian; he said that the surrogate told him to pay it, and that he didn't know me; I told him the receipt

would not be any better with Judge Prindle's name upon it; that I had no authority; I finally told him if he wanted a receipt with his name upon it I would give it to him; I told him it was not good, for it was without any authority; but he insisted upon it and I finally gave it to him; I think the receipt expresses upon its face what it is."

Mr. Ray further testifies upon the matter at pages 814 and 815. At 814 he says:

"Q. Do you mean to say, sir, that the receipt you gave in that case does not say 'for H. G. Prindle?' A. I don't think it does.

Q. What do you think it does say? A. I think the receipt was signed first by me in one style of handwriting; then I know that I had a conflict with the executor, and he wanted a receipt of Judge Prindle, and finally I told him I would put in the surrogate's name; should not make it any stronger, for I hadn't any authority to do it; I think the receipt shows that it was not for surrogate's fees nor disbursements; it may have been for some surrogate's disbursements, but I think it expresses on its face that it was for special guardian; if it says 'For' on it, I think that that 'For' has been put there by some other person; for I did not receive that money for him."

As to the forty-first charge I will simply call your attention to the place where the proofs are. Proofs for the prosecution, pages 531 and 532, and for the defense, page 779.

As to the forty-second charge we offered no proof, the witness not attending in obedience to the subpœna.

The forty-third charge is another of the series of extortions practiced by the respondent. The date is August 28, 1869.

The executor testifies, 493, 494.

The answer in this case is made by Ray as usual, 786.

The forty-fourth and forty-fifth charge, we have offered no proof under.

The forty-sixth charge is another of the series of exactions out of widows, who, with all others, were entitled to have their business transacted at the surrogate's office free of charge. Mrs. Hadlock was first charged $35, but not paying it then, she was subsequently charged $45. She testifies at pages 376, 378.

Mr. R. A. Young testifies to a conversation about this with Judge Prindle himself, at page 522. Ray makes the usual defense to this charge, claiming that he was employed as attorney and counsel in the matter, and that the money was paid directly to him. Upon this charge the respondent himself testifies at page 877 of the

case, claiming that the money was not paid to him. I beg the pardon of the Senate, the evidence for the prosecution is pages 373 and 521. Mr. Ray's testimony is at 780 and 816, and that of the respondent himself, at page 877.

As to the forty-seventh charge: The substance of this charge is that the respondent willfully and corruptly made known the fact to the party desiring the bonding of the town of Smithville in aid of a railroad, that he would decide the question on a particular day, and would decide in favor of the bonding, thereby giving them such an undue advantage over the other party that they were enabled to have the bonds issued and put into the hands of innocent purchasers before any proceedings could be taken for a stay, and thus cause the bonding of the town for about $83,000, whether the proceedings were legal or not.

The proofs upon the charge are quite voluminous; I will read the points of the evidence. Mr. L. S. Hayes, one of the directors of the railroad, testifies, 682:

"Q. Now state what took place the day you went up there; the day the decision was filed? A. Perhaps, as a prelude to that, and to give a full understanding of what took place, I ought to say that some two weeks, or perhaps ten days before that, I happened to meet Judge Prindle at the Eagle Hotel, and said to him 'Aren't you going to give us a decision before long, in our town bonding case? we would rather like to have it;' the judge says, 'There has been such controversy over this, that I do not wish to decide this until I have finished writing an opinion in regard to it, that I am writing, and I would like to put my opinion on record at the same time that I give a decision in the case;' I says, 'How soon can you do it?' he says, 'I don't really see how I can get through with it much before Christmas;' I asked him if he thought he would be able to get through with it at that time; he said he guessed he would, or something of that sort; so I went home and told Mr. Crozier about it."

Again he testifies at page 689:

"Q. Did you desire any other knowledge as to the time when that decision would be filed in the Smithville case than that you received from Judge Prindle in your conversation that you stated? A. No, sir; none whatever.

Q. It was upon this notice that the judge gave you that you and your party again went up to the town of Norwich on the 24th? A. Yes, sir.

This was some time subsequent to the argument and submission of the case, as to the bonding of the town to the respondent. Mr.

Rhodes, one of the commissioners, testifies at page 652. I can state his testimony quicker than I can read it; the substance of it is that he signed the coupons on these bonds along a few weeks before the decision was rendered; he commenced to sign them about the first of December; this being the 24th of December when this party went up to the town of Norwich to get the decision. Mr. Hayes testifies again at page 684:

"Q. Mr. Hayes, when was it that you first got those bonds printed, or rather went to New York to get them printed? A. It was decidedly hot weather; I think it must have been July.

Q. About what was the expense incurred in the proceeding; getting the bonds printed and lithographed? A. In the neighborhood of $100.

Q. How many were there that you got printed altogether? A. A few over two hundred, I think; we used the same form as the town of Greene bonds; had them printed in only one color, and cut out a few words, so that it made it a very cheap matter; the getting up of the bonds.

Q. Your object in getting those printed at that time was that when the decision was rendered you could have those bonds put into the hands of the contractor who had contracted to build your road; so that would be bonding the town whether the proceedings for bonding were legal or illegal, wasn't it? A. It was to have them used and make sure of the road beyond a contingency, and to avoid any delay by injunctions, or any of the sorts."

And again, on page 686, he says:

"Q. Can you give the names of the men who went up with you? A. There were these three commissioners; these three men who were appointed commissioners, Mr. Tarbell, Mr. Rhodes, Mr. Hazzard, Mr. Read, Mr. Crozier, Mr. Bailey and myself were there, if I recollect all.

Q. When was the petition filed for the appointment of these three men who were appointed commissioners? A. There was no petition filed; never was any made."

Now, then, the object and work of the railroad officers is quite plainly indicated by this evidence, coming entirely from their own men. The object was accomplished, and that very night the bonds in the hands of the contractor of the road, as the proof shows. Now, then, I do not propose to go into an extended argument upon this matter; the sole material question is did Prindle, this respondent, have any knowledge whatever of these proceedings that were being had to prevent any review of the decision that would prevent the

bonding? We find that he is having repeated interviews with these men who are so anxious to bond, talking over the matter with them both before and after the time when he set the day, to them, that he would file his decision, especially this man Hayes, who was so anxious to secure the bonding of this town. Prindle, as the evidence shows, and as he himself admits, states the day when he will file his decision. In pursuance of that, they go up to the town of Norwich for the purpose of receiving it, with the bonds all signed except the names of the commissioners, the coupons were all signed, taking up this man that Hayes testified to for the purpose of receiving the decision in the morning of the day of the decision without a pretense that the other party had any knowledge of the proceeding whatever as to the filing and rendering of the decision. Now, then, I wish to read a little from the evidence of the respondent himself at page 902, middle of the page. In speaking about a conversation he had with these men engaged in the bonding of this town in aid of the railroad on the morning when he filed his decision—the morning that he had previously stated to this man Hayes, who was an active man among the board of directors:

"Q. Didn't you know, sir, that the counsel contesting the bonding had great confidence in that petition? A. Well, they appeared to have, and that's the reason why I went to notify him before I appointed the commissioners; if he had said he wanted to make an application to the court to carry up that case, I should have delayed the appointment of the commissioners; I told the gentlemen there at that time that I was going to notify him, and I think they said I hadn't better say any thing to him; I told them I had agreed to do it, and I should do it; there wasn't going to be any sharp practice, I told these Smithville men at the time.

Q. When did you have that conversation with the Smithville men? A. When they came there on that morning after I had finished the decision.

Q. Then they asked you to do something that you thought would be a little sharp, did they? A. I think that Hays said something or expressed a desire not to notify Follett; I know I made the remark that I intended to have my action entirely fair; there was going to be no sharp game, or any sharp practice, so far as I was concerned."

There is the evidence of the respondent himself, *there was to be no sharp game and no sharp practice, so far as he was concerned.* Here is this man in his office, assuming to dictate to him, a judicial officer; asking him not to do this, assuming to be so bold in his presence,

he, the highest judicial officer of the county, was thus familiar with these men, does not this indicate that this respondent then and there knew that there was sharp practice intended on the part of the men engaged in bonding that town? Does it not indicate that knowledge that he himself used?

Senator MURPHY—Did he notify Mr. Follett?

Mr. STANTON—I think he did about noon of that day.

Mr. E. H. PRINDLE—He did about 11 o'clock.

Senator D. P. WOOD—Mr. President: I believe it is pretty generally conceded that we ought to hold an evening session, and, with that view, I now move that we take a recess until 7 o'clock.

Senator MURPHY—I would ask the counsel how soon he will be through?

Mr. STANTON—I trust I will be through very soon.

Senator D. P. WOOD—I suppose we should have an evening session even if he does get through.

Senator MURPHY—Very well.

The PRESIDENT submitted the question to the Senate on the motion of the senator from the twenty-second (Mr. D. P. Wood), and it was decided in the affirmative

The Senate re-assembled at 7 P. M.

The PRESIDENT—The counsel for the prosecution will proceed with his argument.

Mr. STANTON—Mr. President and Senators: At the time of the taking of a recess, I was discussing the forty-seventh charge. I had called your attention to the evidence in support of that charge, given mostly by witnesses upon the part of the defense, and shown to you what the object of the men engaged in the bonding of the town of Greene was, in the way of sharp practice as it may properly be called; that they designed to get the bonds issued, whether legally or not, in the hands of innocent purchasers or contractors, where the town would be bound to pay them under the decision, whatever might be the result of a review of the proceedings before the Court. I quoted also from the judge's evidence, showing what, it seems to me, indicates that he had a knowledge of this sharp practice which they were attempting on the part of those engaged in or desiring the bonding of this town. Now, then, on page 686 of the case, I have called your attention to the evidence of Mr. Hayes, who testified what men went with him on the 24th of December, in pursuance

of this notice from White, to receive the decision. The proof shows that Mr. Tarbell, Mr. Rhodes and Mr. Hazard, the first three mentioned by him, were actually appointed by the judge as commissioners of the town, for the purpose of carrying out the law.

Now, I call your attention to a little further proof, which will develop the fact that every other man who went up from the town of Smithville to receive that decision was a director of this railroad company, and, therefore, disqualified from holding the position of commissioner. I do it for the purpose of showing that these men were the very men selected to be commissioners that were finally selected by Judge Prindle. If you will look at page 679 you will see Mr. Hayes himself testifies:

"Q. Were you a director of the Smithville Railroad Company? A. The Central Valley Railroad Co.; I was."

At page 652 you will see in the evidence of Mr. Rhodes:

"Q. How did you come to go up there that day to Norwich? A. I went at the request of the directors of the road.

Q. What directors? A. The president and Mr. Hayes.

Q. State who the president was? A. H. G. Crozier.

Q. The witness who has already been sworn? A. Yes, sir."

We have already shown now that both Hayes and Crozier were officers of the road. At page 764 of the case you will find, at about the middle of the page, it says in Mr. Tarbell's testimony:

"Q. You started for Norwich at the suggestion of Mr. Read; was Mr. Read one of the directors of this road? A. Yes, sir."

That disposes of another of those men. Mr. Bailey testifies at page 695:

"Q. Are you one of the directors of this railroad company? A. Yes, sir."

Showing, as you will see by reference to page 289, that every man was an officer of the railroad company; therefore they were ineligible to the appointment of commissioners, as you will see by reference to the law they were not to be officers of the company. Now, at page 686, Mr. Hayes attempts to carry the idea, in his evidence, that the men were selected by Judge Prindle. He says at the bottom of the page:

"Q. Who selected these three men? A. The judge selected them; he selected them in the course of the conversation with us.

Q. Was any thing said in that conversation as to your having the bonds already drawn up? A. No, sir; not a word.

Q. How did he come to select this man, Mr. Rhodes? A. I named him among the others.

Q. He happened to choose him? A. He was named as an old citizen, and a good business man of strict integrity, and that he would make a good commissioner; perhaps we recommended him more highly than the rest."

While Hayes carries the idea in his evidence that a large number of men went up, and the judge selected this Rhodes himself, who had signed all these bonds; it appears that all the men that they took up were directors of the road, or these three men whom they wanted appointed commissioners, and whom the judge did appoint. They had gone to the expense of getting these bonds printed; they had utterly spoiled them, unless the men to be appointed commissioners were those whom they had designated.

Is it not a singular circumstance — a little coincidence, if you please — that these men whom they selected, and these three only are selected, by the respondent for the purpose of carrying out this act?

Now, then, he had previously sent word to the attorney engaged in opposing the bonding of this town, which appears in the testimony of Mr. Welch, pages 566 and 567; at the bottom of page 566 it reads:

"Q. State what that conversation was in reference to the appointment of these commissioners? A. Well, sir, I don't think we really had any conversation about commissioners; I think the conversation was more about the effect of the organization of the company; Judge Prindle said he was as much opposed to bonding Smithville as anybody, but if it was a clear case he would have to bond; I think I mentioned the organization being illegal, and he remarked that he didn't think that he would have any jurisdiction over that; but of his own option he says to me himself, 'I will appoint an East Smithville man one of the commissioners, and Mr. Follett has now a petition, and you may say so to him;' which I did, sir.

Q. Mr. Follet was the attorney employed in opposition to bonding? A. Yes, sir."

Why he sends word to the opposing attorney that he will appoint an East Smithville man as one of the commissioners of the case, East Smithville being almost solidly opposed to the bonding of the town, because they received no benefit whatever from the railroad, they, in order that no advantage should be taken in this case, wanted that he should appoint a commissioner from that part of the town in case he decided the case in favor of bonding, and he sends word to the attorney that he will appoint a man; yet in the face of this — in spite of this — he appoints the three men that the railroad men take

up at the time of the decision of which he had notified them. Now, we claim that this indicates, inasmuch as they had gone to so much expense; I say it indicates a knowledge upon the part of this respondent, of the sharp practice intended and of an activeness or assistance by him in the carrying out of that sharp practice, and in the bonding of the town under such circumstances as would prevent a review of the proceedings.

With these remarks I shall leave this charge and pass on to the forty-eighth. This charge alleges that the respondent allowed George W. Ray to practice before him as an attorney and counselor at law, he being at the time his clerk. This charge is drawn under the statute of 1844, and also under the statute of 1847, two similar acts, Laws of 1844, page 448, section 4; Laws of 1847, page 648, section 52. I have copies of these acts in this work of Dayton on Surrogates, and I will read the acts under which this charge is framed:

"No partner or clerk of any judge or officer shall practice before him as attorney, solicitor or counsel in any cause or proceeding whatever, or be employed in any suit or proceeding which shall originate before such judge or officer; nor shall any judge or officer act as attorney, solicitor or counselor in any suit or proceeding which shall have been before him in his official character."

Again: "No son, partner or clerk of any surrogate shall be permitted to practice before such surrogate as attorney, solicitor or counsel for any party to any proceeding before him."

The question whether Mr. Ray was clerk I have already discussed. I am aware that an interpretation is claimed to be put upon the statute of 1844, to the effect that the clerk of any surrogate means the statutory clerk appointed by the surrogate to certify papers, and does not mean simply any clerk who may chance to be employed in his office. It is a sufficient answer to this to say, that the clerk mentioned is classed with a son or partner, evidently aiming at a relation of confidence between the officer and party prohibited from practicing, that would tend to corrupt the administration of justice. Any clerk stands in that relation, and the language is so broad as to cover all. It says *no clerk*. Besides, it does not say the clerk of a court, it says the clerk of the officer, thus referring to the officer personally. But there is another answer still. This statute which prohibited a clerk of any surrogate from practicing before him was passed in 1844. It was not until 1863 that the act was passed, creating the statutory clerk of the surrogate referred to. If it applies only to him this statute was never operative from 1844 up

to 1863. Of course this cannot be, and the act, broad as its language is, includes all who act in the capacity of clerk, or do clerical work for the officer named. While the statute of 1863 provided for designating a clerk *employed in the surrogate's office* for the purpose of certifying papers, the respondent goes outside of his office and appoints Thompson, not in any manner employed there, as he himself testifies at page 369 of the case:

"Q. You were appointed clerk of the surrogate's court previous to 1864? A. Not previous; in 1864.

Q. Have you ever been appointed since that time? A. In 1868.

Q. Have you got the order of appointment? A. I have not.

Q. Have you ever done any duty in the surrogate's court, and if so, what? A. I have certified papers as clerk of the surrogate's court, and that is the only thing I ever did."

And what is the object of this? the appointment of a man outside of the office as clerk of the surrogate's court, when Ray was in the office and there employed.

Mr. E. H. PRINDLE — In 1864 was he?

Mr. STANTON — He might not have been in 1864, but he was re-appointed in 1866. It would probably be a thing too bold, even for this respondent, to appoint or designate Ray, who *was employed* in the office as such clerk, and still allow him to practice and aid him in collecting his fees as an attorney and counselor at law, and as the fees to be collected on Ray's account or in his name are so very important, an outsider is appointed this statutory clerk, after the board of supervisors, in the fall of 1871, passed a resolution that no lawyer should occupy the surrogate's office. The respondent, desiring to continue Ray in his old position, really made him a proposition to which Ray testifies at page 792:

"Q. Did you ever have a talk with Judge Prindle in reference to your own appointment as surrogate's clerk? A. I did, sir.

Q. When was that? A. Since the board of supervisors last fall passed a resolution that thereafter no lawyer should occupy the surrogate's office. They passed a further resolution; something about the pay; Judge Prindle told me that he would like to appoint me to be clerk; I told him I wouldn't do it."

I say this expresses a desire on the part of this respondent to continue Ray, really, in his old position, the position he had occupied for so many years, and he makes the proposition. Further evidence, it seems to me, of the fact of Ray's clerkship under this respondent, is not needed. As to that portion of this charge, that Ray was continually practicing before the respondent, it is substantially admitted

by them, that is, by the defense. Ray not only flourishes his advertisement as though that were a defense to make when he violated the law openly, at page 753 introduced an advertisement:

"Q. Will you state what you did in regard to advertising yourself as an attorney there in the surrogate's office? A. I advertised in each of the leading county papers, in the Chenango *Telegraph*, and in the Chenango *Union;* I have one of the papers which contains my advertisement.

Q. Will you read it? A. I have a card there which I would like to read; my advertisement that I published in both of the papers (in one it reads Geo. W. Ray, and in the other G. W. Ray); reads like this (reading from Chenango *Telegraph*): 'Geo. W. Ray, attorney and counselor at law, Norwich, New York. Office over county clerk's office. Special attention given to proceedings in surrogate's court, proof of wills, settlement of estates,' etc. I also had at the entrance of the surrogate's office a large sign reading, 'G. W. Ray, attorney and counselor at law,' or, 'G. W. Ray, law office,' I think it reads —"

Again he testifies at page 828:

"Q. Judge Prindle never made any suggestion to you of the impropriety of your appearing before him? A. No, sir.

Q. You always did it with his consent and encouragement? A. Why, he never encouraged me.

Q. He did by referring parties to you? A. Sometimes he did refer parties to me.

Q. How many actions have you been engaged in in the county court as attorney and counselor before Judge Prindle as judge? A. I shall have to guess at it.

Q. About how many? A. Fifty.

Q. How many times have you appeared in the judge's court of sessions, or the court of sessions of Chenango county, as attorney or as counselor? A. Anywhere from fifteen to twenty-five or thirty times.

Q. During what time? A. From the time I was admitted in November, 1867, down to January, 1872."

That is the proof which we offer to sustain the charge, and if it shall be found by you that Ray was actually a clerk of the surrogate, then there can be no question under this charge.

The forty-ninth charge is expressly admitted by the respondent himself. I refer first to the evidence of Mr. Tillotson at page 488.

This is the special charge of his demanding ten dollars of Mr. Tillotson for drawing papers to be used before him as county judge. I

have already read the judge's testimony as to that. As a reference to the evidence, I will state evidence for the prosecution is at pages 488 and 489. The evidence of Judge Prindle himself is at page 910.

The fiftieth charge is also substantially admitted by the respondent himself. I refer to his evidence at pages 901 and 904. This charge is, that he suffered himself to be employed as solicitor both for and against executors over whose accounts he had jurisdiction by law. I have already read you the account of the Barrows case, and at page 893 the respondent testifies himself, in answer to his own counsel:

"Q. You have been attorney in some cases for and in some cases against executors? A. I have.

Q. Did it occur to you that there was any statute forbidding you to so act? A. I did not know there was any such statute until this trouble commenced; there have been but two or three instances where I have ever done it at all; I was employed in some cases before my election which I tried afterward, where executors and administrators were concerned; had I known of the statute, I most certainly should not have done it."

Again, at page 904, near the bottom of the page, or commencing about the middle of the page—

Senator D. P. Wood — What page?

Mr. Stanton — Page 904 — he testifies:

"Q. Do you recollect the case of *Coles* v. *Loomis*? A. I do.

Q. In which you were engaged? A. I remember trying the case.

Q. You were attorney in the case? A. I think so.

Q. Was David W. Loomis an administrator of Vinson Loomis, deceased? A. I suppose so; I don't remember.

Q. The action was brought against him as such administrator, and you were the attorney? A. Action was brought for burning a barn by the father; I had been counsel of the father previous to that, and defended the father on an indictment successfully; I had been counsel for the father on the indictment; defended him on that indictment.

Q. The letters were issued in Chenango county? A. Certainly.

Q. You had jurisdiction over the accounts of that administrator as surrogate at the time? A. I presume perhaps I had, unless being counsel for them would prevent it, and probably would.

Q. Were you counsel in the case of *Guile* v. *Louck; Catharine Guile, executrix, etc.*, v. *Louck*? A. Yes, I had notice of retainer; that was the last done about it.

Q. Mrs. Catharine Guile, the executrix, had letters issued to her in Chenango county? A. She had.

Q. You had jurisdiction over her accounts? A. I suppose I had.

Q. You tried as counsel the case of *Colton* v. *Randall*? A. I did.

Q. Tried it against the executor and summed up the cause against him? A. Yes, sir.

Q. You issued letters to him as surrogate? A. Yes, sir; the will was proven."

And referring to his knowledge of this act on page 905:

"Q. Did you ever read the further law, 'No surrogate shall be counsel, solicitor or attorney, for or against any executor, administrator, guardian or minor, in any civil action over whom or whose accounts he could have any jurisdiction by law?' A. I cannot swear about that."

He could not swear whether he had ever read that law or not, although it is laid down here as one of the first things in "Dayton's Surrogates." He testifies that he kept this book as he kept any other text-book on his table. I remember the question was put to him whether he ever read it, and he said "I presume so, I read it as any other text-book; it was in my office; I read it as soon as the trouble commenced." This charge is admitted, as I said before, unless we except that defense which he makes here of ignorance of the law. In administering the law in criminal cases as well as civil, it is an old maxim, and always observed, that "ignorance of the law is no excuse;" this is enforced upon laymen and ignorant men whom we know practically do not know the law. Is the rule to be supended as against a judge, and he, too, a judge whose especial official duty and his oath of office require him, above all other lawyers and above all other judges, to know that particular law, because it pertained to the duties of the office which he had occupied from the people, and for the doing of the duties of which he received his salary? If ever that old maxim is to be enforced it seems to me, it ought to be rigidly insisted on here, in this case, as Mr. Senator Gibson says in delivering his opinion in the case at the trial of George W. Smith. At page 328, he says: "The law presumes that he knew what was his duty, and it is against public policy to allow an officer to shield himself from removal by saying in excuse he didn't know his duty; it is rather an aggravation of the offense than a mitigation; it is like the excuse of drunkenness, which is never admitted as a defense, because, if allowed as such, any one wishing to commit crime could always free himself from punishment

by merely getting intoxicated. So here the judge or officer could avoid the penalty by pleading that he was not aware of the law. Ignorance of the law has always been held to be no excuse for its violation and should not be in the case under hearing."

Under the fifty-first charge we have given no evidence, as that is one of the general charges which was passed upon by the resolution of the Senate in the reception of the evidence.

The substance of the fifty-second charge is, that the respondent ordered the payment to Ray of $225 out of the estate of the Rev. Leonard Bowdish, and ordered the widow to pay it. That the order was granted and the money paid there is no dispute. The respondent's evidence in defense of the matter is simply Ray's explanation of what the charge was for. We have the itemized statement, and I desire to read it. It is at page 822. There were two statements put in evidence. One made by Ray at one time, and another what he claimed to be the final papers that were originally the foundation of the order. The order itself, put in evidence will be found as Exhibit forty-nine, on page 821. If you look for a moment to the items in this account, which he ordered to be paid to Ray, you will see their reasonableness:

"SURROGATE'S COURT—CHENANGO COUNTY.

In the matter of the execution of the last will and testament of LEONARD BOWDISH, deceased.

COSTS OF PETITIONERS AND OF OBJECTORS.

Disbursements.

Expenses of C. G. Bowdish, petitioner and legatee and conditional executor, from Collinsville, Conn., to Norwich, to commence proceedings for proof will, etc., and return	$25 00
Same at time of proof of will, and to file objections to issuing of letters, etc., and return	25 00
Paid Argus, State paper, publication fee of citation to prove will	15 20
Paid expenses serving citation on Susannah J. Ogden, in Cortland county	8 00
Paid expenses, fare, hotel bills, livery hire, etc., serving citations to prove will on heirs in Otsego county	20 87
Paid expenses serving citations on heirs at Skaneateles, N. Y.	2 00

Paid expenses serving citations, etc., on Hancy Bowdish, widow and executrix	$3 00
Paid postage, estimated	1 25
Paid expenses subpœnaing witness to the will	5 00
Stamps on probate	10
Stamps on letters	6 50
Stamp on bond	1 00
Stamp on certificate on will	05
Incidentals	1 00
	$113 97

The first item is for expenses of Mr. C. G. Bowdish, petitioner and legatee, in coming from Connecticut to Norwich. You will recollect that he testifies that he only came up twice, and this $25 is to cover the time when he came up to attend the funeral of Mr. Leonard Bowdish, you recollect. Upon the conclusion of the funeral, or about two hours after that, this Mr. Bowdish went to the house of the widow and demanded to see the will. He says it was refused and he immediately took proceedings to have the will proved. The second item is for the same gentleman, expenses to come up to Norwich at the time of the proof of the will, etc.; another, paid *Argus*, State paper, etc.; paid expenses of serving citation on Susan J. Ogden, in Cortland, $8. Now, the actual expenses should have been about $2 or $3. Now, if you will look over the page you will find the second item; there is where Ray charges for services; he says, "two days to Cortland county to serve citations on S. J. Ogden, and consult her, $10," he going over there two days and charging for his services in order to accomplish the service of a citation. Again, in the first account is the item, "paid expenses, fare, hotel bills, livery hire, etc., serving citations to prove will on heirs in Otsego county, $20," and in the second account, "four days to Syracuse, Utica, Richfield Springs, Hartwick, etc., $15." That is Ray's services, where the usual course, as all lawyers know, is sending the paper to the sheriff of the counties where the parties reside, costing, perhaps, $3 for the service upon each party. Another item is, "paid, serving citation on heirs in Skaneateles, N. Y., $2," showing that farther away than Cortland county citations could be served for less — for only $2, where in the other case he had charged $8. Again, "paid expenses serving citation on widow, etc., $3;" turn over the leaf, you will see he goes up to Earlville, a place about fifteen miles above the town of Norwich, a

place where there are several trains of cars running daily, and charges $3 for his services going up there and $3 expenses, making $6. Paid postage, estimated, $1.25, and there is a charge of incidentals of $1, and there is no knowing what those are.

Now, he charges services for going one day to Bainbridge, $5; drawing probate for will, $3. Is not that official duty of the surrogate, if he has got any duty at all? And yet it is charged here in favor of Ray for drawing probate for will. Drawing citations, $5. Is not that an official duty of the respondent? And yet that is charged here in favor of Ray, and the copying of the will, etc., and other official services, but it is put in here in favor of Mr. Ray; then it says, counsel fee included in above charges, etc.; services in matter of giving bail, examining law two days before surrogate, writing letters, drawing papers, etc., $35.

Now, then, the old lawyers in this Senate know very well what the fee-bill was in the Court of Common Pleas. I have already referred you to the law, also, as one of the first things found in Dayton's work on Surrogates, as to the power of the surrogate to award costs; it is fixed by the statute and it must be according to the fee-bill established by the old Court of Common Pleas, where the attorney's services were charged by the papers he drew.

No one will claim that these charges were either reasonable or proper, for the simple purposes of serving citations, to send this man Ray all over the State of New York and State of Connecticut, and, not only paying his expenses, but also day wages for doing it; we say it is outrageous, and not only that, but it was utterly wrong and an outrage upon the widow who was compelled to pay it, and received a receipt from Mr. Ray, which is also in evidence. We claim that this charge is fully proved. As to the fifty-third and fifty-fourth charges, they each allege extortion. I will simply call your attention to the citations of the testimony, pages 535, 536, 537 and 538.

The evidence of the respondent in this case is the testimony of Frederick Merrell, a young man then in Mr. Prindle's office, who says it was he instead of Ray that was present when Mr. Humphrey first came there; but he does not know whether or not Humphrey saw Mr. Prindle that day. Ray knows, as usual, that Mr. Prindle had gone to Cortland, and that he himself was in Otselic. But Mr. Prindle says nothing about it in his evidence, and does not, therefore, deny but that Mr. Humphrey saw him, and that he directed him to pay the $6.50 charges on the issuing of letters, although he

went there with his papers all drawn by attorneys living in his own town. As to the settlement of the estate, Ray testifies, page 787.

I have now, senators, called your attention to the points of the evidence pertaining to each charge. We claim that most of them, if not all, upon which we have offered proof, are sustained in substance if not to the letter. Enough, at least, is proved to demonstrate the utter unfitness of the respondent for the position which he holds. And you have heard enough of the testimony of witnesses from the county of Chenango to convince you of the great distrust that is there prevalent, of the honesty and integrity of this highest judicial officer. It is not a light matter for men, as they are passing through their last sickness, to be rendered uneasy in mind by the reflection that their orphan children may be plundered of a part of the little property, which they have striven to accumulate, by the rapacity and greed of the officials who are paid for protecting it. And it is their right that they should be freed from reflections of this character. It is due to the people of Chenango county that they should have some person in this, their highest judicial office, who has never been guilty of the practices which have been shown to be almost the daily business of this respondent, and one who is entirely above them. The counsel for the respondent will undoubtedly argue that most of these matters are trivial, that they are too small to be noticed. I reply that the law takes notice of him who robs a hen roost equally with him who robs a bank, and, of the two, I think the most contemptible offense is the smaller. There is a certain respect we can have for a man who does a mean thing under great temptation, when, as he supposes, great benefits are to result to him from it, which never enters into our feelings at contemplating petty offenses, which show a meanness of spirit of the sneak-thief order, exciting only our bitterest contempt. Small matters, do they say; and indeed it is a small matter to rob the widow and the orphan, suppose it but ten cents, but done by the officer elected and paid, and under an official oath to guard and protect them. George W. Smith's counsel made the same plea, but he was removed. Judge Prescott made the same plea, but he was impeached, though the two offenses of which he was convicted was the taking of less than $20 illegally, although defended by the best counsel that Massachusetts could supply, even in the days of Webster. George W. Smith's counsel made the same defense; it was a small offense; taking some small amount of bounty money, and yet George W. Smith was removed. It is no matter to say they are small matters; all the more reason, for the prejudices which he makes upon the

people are all the more insidious, if he does it in such small acts, such acts as are charged here in this case. We have heard a great deal about hardship on the part of the respondent's counsel, and the respondent himself has made several speeches in the progress of this case, and we hear a great deal about persecution, how he has been followed from the commencement, and that these charges originated in a political squabble, that is the term, I think, they use. Now, senators, I ask if these things we have proved are true; if he is guilty of these offenses; when ought men, honest men, true men, to have undertaken to oppose Mr. Prindle? If not before, ought they not to do it at the time when he seeks to fasten himself upon the bench of the county of Chenango for six years longer? I ask you, wasn't it the duty of honest men, whether they belonged to the political party to which he belonged or the opposing party, when he sought the renomination and re-election, to oppose him because of these things and of his unfitness for the office? I say, when ought they to have done it if *not* when he sought to be again elevated to office? And can you doubt but that the men who did it were animated by as honest and honorable motives as can animate any man? I know many of the witnesses themselves who have testified upon this stand here, who have testified that they were members of his party, and they have testified to the same things that I have said to you here. It is an old and familiar defense, persecution! No man who is brought within the clutches of the law for offenses which he has committed but will raise the cry of persecution; and the more guilty he is the more he will talk about it, because he hasn't any other legitimate offense. They talk, too, about the grand jury; why, we have heard that all the way through. The counsel says here, a day or two ago, that the grand jury acted upon it for about ten days. I had the honor, if it be such, of being the district attorney at that time, and complaint was made to me as district attorney, by as good and respectable citizens as reside in the county of Chenango, against this respondent, and, as a simple duty, I issued subpœnas, and had the matter brought before the grand jury, and, after it was brought before them, I was necessarily called away to appear before a court over which the respondent himself presided, and it was delayed while I was away because the grand jury did not like to proceed in the matter during my absence, and, therefore, that is evidence, I suppose, in favor of this respondent, a grand jury impaneled in his own court, instructed by this respondent in person, the foreman appointed by him; but I will not make any other remarks about the way in which

the grand jury was organized; but it was the most extraordinary organization of a grand jury ever known in Chenango county. Why, they found no bill! Is there any thing extraordinary about that? And then it was before the board of supervisors; they who really instituted this proceeding, and who by their own official act sent it here and asked this Senate to go on with this prosecution. It stands based upon this resolution of the board of supervisors of Chenango county, and yet they are talking here and throwing out the accusation that it is carried on because of the vindictiveness of some of the political enemies of this respondent.

With these remarks, and thanking you for your kind attention, I will leave this case to the counsel upon the opposite side, then to be closed by my colleague on the part of the prosecution. I would like, however, before sitting down, to call the attention of the Senate to our position in reference to fees, as I understand there is some misunderstanding as to what we claim the law to be. I will simply make a little explanation. From 1844, the passage of the fee bill, which I have read, up to 1867, these regular fees were required to be charged for the benefit of the county; fees for doing all this surrogate's work; then the act was passed which abolished surrogate's fees altogether. No fee to be collected; that is in 1867. Now, then, in 1869 another act is passed which I would read if I had at hand, and I will find it and do so if the Senate wish; an act providing that the surrogate shall charge for the certified copies of papers made in his office by the folio, for the use of the county. Since this act of 1869, it becomes the duty of the surrogate to charge for these papers; the certified copies of papers mentioned in this act for the use of the county; and he makes his regular returns under this particular statute for these fees received; for these certified copies. Those are the only fees which a surrogate has any business to charge at this time, and he is authorized to make those charges.

I say this simply by way of illustrating the law in reference to fees, that there may be no confusion in reference to that.

ARGUMENT OF E. H. PRINDLE, ESQ., COUNSEL FOR RESPONDENT.

Mr. PRINDLE arose and said:

Mr. President and Senators: Before proceeding to the discussion of the charges in this case, I desire to refer to some remarks made by one of the counsel with reference to the summing up; the one who proposed the postponement of this argument on account of the

absence of senators. He stated that his associate counsel, Mr. Stanton, had informed him that there was a request, on the part of the counsel for the respondent, that two counsel should sum up on a side. I wish to state here that no such request was ever made by me, and I believe I am the only one who conversed with Mr. Stanton particularly upon that subject Mr. Stanton informed me, at the time of the last adjournment, that they only desired one to sum up; that he did not desire to say any thing; that Mr. Peckham was to do the summing up. About a week ago I had another conversation with him upon the subject. He stated to me that he had written to Mr. Tremain asking him to sum up the case, and that he had been expecting a letter for two or three days and had not received any. He never intimated to me that he desired to sum up the case, after having told me before that he did not desire to; and yet he comes here with a written speech occupying seven hours in its delivery, which he must have been weeks in preparing, conveying the idea to me all the time that he had not any thing to say in the case, and only desired to know from Mr. Tremain whether he would engage in summing up the case. I desire to notice, also, the assumption that the gentlemen who appear here against the respondent are counsel for the people. I am not aware they are counsel for the people. Certain charges were made by certain individuals, I forget the number of them, as I have not the charges before me, and two of these individuals testified here to having paid money in aid of this prosecution; I suppose the counsel were employed by these men; they are in the employ of the men who paid them the money for the work they are doing here, but I am not aware that they are employed by the people, either of Chenango county or of the State. The *people* of Chenango county have elected this man to office; they have placed him in the position of county judge and surrogate of the county of Chenango. They are not here asking this honorable body to remove the man they have so recently placed in that position. These gentlemen are the counsel of the men who are opposed to the wishes of the people of Chenango county, and who are asking to have that undone which the people of that county have done. The counsel who has addressed the Senate saw fit, in his closing remarks, to allude to the grand jury and to his position as district attorney of the county of Chenango, and before proceeding to the discussion of these charges, I wish to refer to those remarks; it must have occurred to senators as somewhat peculiar that this man has been the prosecuting officer of Chenango county for the last three years, during the time there has been this open violation of the law on the part of

the respondent, and has sat idly by and never discharged his duty by having this offender punished, brought before the grand jury, indicted and convicted. It must appear somewhat singular, I say, to this Senate, that this man, coming here with his pure and disinterested motives, should wait until he was defeated in a political convention for the office of district attorney, before he notices any of the grave charges against the county judge. He lives in the village of Norwich, where the county judge resides. He is engaged in the practice of the law where Mr. Ray resides. This business has been conducted under his immediate eye whilst he held the office of district attorney of that county. He has seen Mr. Ray practicing in these different courts contrary to the statute. He has known of this taking of illegal fees, according to his statement here. He has been an eye witness of this violation of the law. Where was the official oath that he took as district attorney? Why didn't he see that the law was enforced? I ask you, Mr. President and senators, how this comports with the disinterestedness and purity of motive which this man now professes in your hearing? Does not it seem a little strange? Does it not look as though, possibly, he may have overstated the case against this respondent? The gentleman has alluded to the convention in which the respondent was for the third time nominated to this office. He don't allude to the fact that up to that time he had not attempted to expose the respondent. He don't allude to the fact that these charges were made in that convention by the partner of the man who desired to displace the respondent. He don't allude to the fact that after the respondent was nominated, he sought to be placed upon the ticket with him as the candidate for district attorney, and not until after he was refused that place, did he oppose the election of the respondent.

Senator BENEDICT —Where do you find these facts, Mr. Prindle?

Mr. PRINDLE — I had not supposed that much allusion would be made to these matters, and I have not a memorandum of the particular place where they may be found.

Senator BENEDICT — They are not in the testimony.

Mr. PRINDLE — Perhaps not fully. It is often, I think, referred to in the testimony, the proceedings of the convention. I think it is referred to in the evidence. It was by Mr. Glover. I may be mistaken, but I am quite certain it is referred to in the testimony somewhere. The counsel traveled a little outside of the evidence, and I did not know but the Senate might possibly permit me to answer it.

Senator TIEMANN — Go ahead.

Senator BENEDICT — By all means; I did not know but I had overlooked the fact.

Mr. PRINDLE — Of course it will be necessary for me to occupy considerable time in the summing up of this case on the part of the respondent, much more than I had intended. I did not suppose that the Senate would be dependent upon what counsel might say for their knowledge of this case. Counsel seem to carry the idea that senators will not examine this evidence, and even senators who were present when this evidence was taken would probably not understand the case, unless it was fully gone over on the part of counsel. I had entertained no such idea. I had supposed that it would be only the duty of the counsel in this case to call the attention of the Senate to the leading facts in the graver charges that are made, and certain principles of law, and that the summing up would be brief; but since seven hours have already been occupied by the counsel on the other side, and more time, I know not how much, will be by the distinguished counsel who is to follow me, it will be absolutely necessary that I shall consume considerable time in going into this evidence, though not to the extent that the counsel who has already summed up has done. Let me call your attention, before going into the particular charges, to the circumstances surrounding the case. After these charges were made in this political convention, they were taken up and published in the newspapers. That I believe is in evidence These charges were also published in pamphlet form, in a pamphlet, entitled, "The Mill of Extortion," and scattered through the length and breadth of Chenango county, and not only through Chenango county, but in different portions of the State. The county of Chenango was raked over, as I might say, with a fine tooth comb. Every person who had ever paid money into the surrogate's office during the time the respondent had held office, was interrogated as to the money that had been paid, whether for stamps; whether for services; whether for publication fee or any thing else. The rumor went abroad that the respondent had been robbing the people of Chenango county, and naturally enough many persons who paid money into that office thought they might have been wronged. They would go back two or three years, three or four years perhaps, to some partly forgotten and never fully understood transaction where they had paid money into the surrogate's office; and call up the facts as best they could. Then parties who were opposed to the election of the respondent, went about into every

school district and procured affidavits to be made; that were published in the papers and in this pamphlet. These affidavits were drawn by the personal enemies of the respondent, by reckless persons, and the facts were distorted; the affidavits were put in such shape as to show the facts in the worst possible light for the respodent. In many cases there was no truth whatever, and in some cases there was some truth in the affidavit. Now, when parties come here to swear, before the Senate, they have been guided in their testimony by these old affidavits they have once made; they thought it was necessary to testify consistently; to testify as they did before. These affidavits have been a guide and a memorandum for their testimony before the Senate; and it is not strange that the facts should be distorted; it is not strange that parties should mistake the facts; not, perhaps, having understood what really had transpired in the surrogate's office, or having forgotten what did actually transpire. We have had no notice beforehand as to the witnesses who were to be examined here; no list of witnesses was furnished. They were picked up in different parts of the county. They had made a statement, made affidavits beforehand, and, of course, whether their statements were true or false; whether they were mistaken or otherwise, it was a very difficult case to meet. Mr. Ray, during most of this time, had been in the office, and, in most instances, of course, was the only witness who could be called on the part of the respondent. No matter how mistaken the witness who comes here might be as to the circumstances — as to the facts — Mr. Ray, in a majority of cases, was the only person the respondent could rely upon to throw any light upon the transaction whatever — transactions occurring months and years beforehand — susceptible, perhaps, of the clearest explanation, yet, often, that explanation, perhaps, could not be fully furnished. Now, with these general remarks I will proceed to the consideration of the charges. Mr. President, I desire very much, before discussing them, that there should be all the senators here, or mainly all who are to vote upon this question. I don't know whether they are all present now or not. I thought they were not at the time I commenced my remarks, and unless they are all present, or nearly so, I should prefer to postpone until morning.

Senator MURPHY — Mr. President: I think the request is reasonable, at all events. I have got enough of this case for one day, and I move the Senate do now adjourn.

Senator CHATFIELD — Mr. President: I hope that motion will be withdrawn a moment.

Senator MURPHY — I will withdraw it if you wish to make any remarks, but I insist upon the motion being made.

Senator CHATFIELD — Mr. President: I desire to move that we go into executive session.

Senator MURPHY — Mr. President: I have no objection to that.

Senator CHATFIELD — Mr. President: I do now move that we go into executive session.

Senator D. P. WOOD — Mr. President: We have got all the senators here present now that we have had to-day. We have got probably as many as we shall have present upon this hearing at any time until the hearing is closed. After it is closed, of course, we can take such time for the final decision of it as we see fit, either do it at once or wait until we get a full Senate; but it appears to me, sir, the proper business in hand now is, to dispose of this case. It has dragged its slow length along through a whole year nearly, and it appears to me it is more important than any executive session. We have now, at least, three-qnarters of an hour that may be consumed in this argument. The counsel are here in the Curtis case, which is set down for to-morrow; the witnesses will be here to-morrow to a very large number, at the expense of the State. The best we can do, if we continue our sitting for another three-quarters of an hour or an hour, we cannot get at the Curtis case before to-morrow afternoon. If we adjourn now, very likely we shall lose the entire day, to-morrow, so far as the Curtis case is concerned, and we shall have a large number of witnesses here at a great inconvenience to themselves and at a great expense to the State. Mr. President, it appears to me that we ought to go on with this case.

Senator LEWIS — Mr. President: I move as an amendment to the motion of the senator from the twenty-fourth, that the argument continue until nine o'clock, and that then we go into executive session.

The question was submitted on the amendment of Senator Lewis, and it was declared carried.

The question was submitted on the motion of the senator from the twenty-fourth as amended, and it was declared carried.

The PRESIDENT — Mr. Prindle will proceed in his argument until nine o'clock.

Mr. PRINDLE — Mr. President: I will first call the attention of the Senate to the seventeenth charge, intending not to discuss to any extent the minor charges; I had proposed to take the more serious charges and go through with them, and I will read that charge in words as follows:

"That on the 5th day of August, A. D. 1868, at the town of Norwich, in the county of Chenango and State of New York, Horace G. Prindle, then being county judge and surrogate of the said county, and the will of one Benjamin Hook having been duly admitted to probate by and before said surrogate, and letters testamentary having been duly issued to Esther Hook, widow of said deceased (and now Esther Russell), unmindful of the duties of his said office and of his oath of office, and for his own private gain and advantage, did corruptly, willfully and fraudulently persuade and induce the said Esther Hook (now Esther Russell), executrix of said last will and testament (she being then an old lady of the age of sixty-eight years and upward, and relying upon the said surrogate for counsel and advice in reference to her duties as executrix of said estate), to sell to him, the said surrogate, $1,500 in United States 5–20 bonds belonging to said estate, at a sum greatly below their actual market value, to wit, for their face and a small amount of unpaid and accrued interest, said surrogate well knowing that said bonds were then worth in the market a premium of upward of $130, over and above what he paid for the same, and well knowing that the said Esther Hook, executrix as aforesaid, could get the full value of the same at the National Bank of Norwich, where said bonds were then deposited for safe-keeping, by walking to said bank, a distance of about forty-rods; that said surrogate, fearing that if said executrix went to said bank after the bonds herself, she might learn that said bonds were worth the premium aforesaid, persuaded said executrix to give him, the said surrogate, an order therefor in writing, indorsed upon the deposit ticket of said bonds; and that on the 26th day of December, 1868, said surrogate presented said order to said National Bank of Norwich, and gave therefor a receipt indorsed upon the deposit book of said bank in the following form, to wit: "Rec'd fifteen hundred 5–20 bonds opposite per order of and for Esther Hook, executrix of Benjamin Hook, deceased, Dec. 26, 1868. H. G. Prindle;" and on the same day had said bonds transferred to his own private account at said bank, and on the 2d day of November, 1869, drew said bonds from the bank aforesaid, and exchanged them for New York and Oswego Midland railroad bonds, at the office of the treasurer of said railroad, in Norwich, New York, for his own use and benefit, thereby corruptly and unlawfully making for his own private use and advantage out of said estate about the sum of $300.

Now, the leading characteristics of that charge are that he willfully and fraudulently persuaded and induced said Esther Hook to

sell said bonds, well knowing that said bonds were then worth in the market a premium of upward of $130; well knowing that she could get the full value of the same at the National Bank of Norwich, fearing that if she went to the bank she might learn the bonds were worth a premium, persuaded her to give him an order in writing indorsed upon the deposit ticket of said bonds, etc. I say if you examine the evidence in this case critically, and compare it with that charge, that there is scarcely a word in the charge as shown by the evidence of Mrs. Russell herself. I say that the transaction, as narrated by Mrs. Russell, is a simple business transaction, wholly outside of the surrogate's duties or official duties, and that there is no pretense of any legal fraud on the part of the respondent in that transaction, and there can be none, and I can show it from the evidence given by Mrs. Hook, I think, and the other evidence in the case. I suppose the respondent is not to be convicted because he happened to deal with a woman who is sixty-eight years old. That charge might do to go into a political campaign, that the respondent purchased bonds of a woman and a widow who is sixty-eight years old, but it is hardly to be considered a crime before this body. The respondent had a right, as a citizen of the country, to purchase the bonds of a woman and a widow, and a person sixty-eight years old, if he saw fit to do it and she saw fit to sell them to him. That is not crime. That was not fraud in itself. Now she came to the surrogate's office for the purpose of having the will of her husband, Benjamin Hook, proved, five days before she was married to her present husband, Mr. Russell, although she carries the idea that Benjamin Hook, her former husband, was constantly in her mind, and that his death was brought constantly to her affections and her feelings. I submit to this Senate whether five days before her second marriage she might not have had her second husband fully as much in her mind as her first husband. This, you recollect, was on the 5th of August, and she was married on the 10th.

Senator TIEMANN — You don't mean to say the marriage of the second husband was five days after the marriage of the first husband?

Mr. PRINDLE — No, sir; I mean to say it was five days after the selling of the bonds, and five days after the proof of the will of the first husband.

Senator MURPHY — How long had the first husband been dead?

Mr. PRINDLE — I call the attention of the senator to the 323d page:

"Q. When was it that your first husband died? A. He died four years ago last January, the 19th day of the month.

Q. When were you married the last time? A. The 10th of August.

Q. What year? A. In the same year; my husband died on the 19th of January, and the August following I was married again."

Senator THEMANN — That is pretty good.

Mr. PRINDLE — This transaction occurred on the 5th of August.

Senator MCGOWAN — What was her age?

Mr. PRINDLE — She was sixty-eight years of age. This idea that had been instilled into the old lady's mind so industriously by these malcontents, that she thought it was the surrogate business, and she was so overcome by her thinking about her former husband in the surrogate's office, was made up for the occasion; perhaps not for this occasion, but it was made up for the campaign and argued in the campaign, and the counsel has induced the old lady to come here innocently and swear to it. I was really glad that the old lady was brought here, because senators who were present had a chance to see her; had a chance to know just what kind of a woman she was; she was not enfeebled by age; a woman that, in the terrible heat of that time, could come here from Chenango county and give her evidence with all the vigor that she gave it, was not enfeebled either in mind or body; a woman of great personal vigor and strength, I will say, both of mind and body, notwithstanding some peculiarities she showed here. She was, and is, a woman perfectly competent to attend to her own interests; perfectly competent to transact business; understanding herself well, so far as business affairs are concerned, much better than most ladies under such circumstances. She had a man with her, a grandson, present at the time, aiding and assisting her, if necessary, to do this business and to consummate this bargain. It was her grandson; I don't recollect his name, but he was a man — an able-bodied man; a man *compos mentis*, I suppose; nothing appears to the contrary — the person for whom she desired this ready money, who was going to start west within five days and invest the money in property at the west; he was present during this transaction, ready to assist this lady with his advice, with his counsel, to take care of her interests if necessary, so that the respondent was not dealing with a feeble old lady alone, who did not understand her rights, as has been so often represented. I may say here that the purchase of these bonds on the part of the respondent was not an official act; had nothing to do with his duties as county judge or as surrogate. All the evidence shows that the surrogate business was completed, absolutely completed, before any thing was said about the bonds. I will not stop to call the attention

of the Senate to the evidence upon that point now; but you will recollect the old lady, in her narrative of the event, said nothing about any bonds until after the will was proved and the business all completed. I say another thing, the respondent did not take advantage of her ignorance. She knew there was a premium on them as well as he did. At page 319 she says, "Well, I was ignorant; I never once thought that — well, I was scared, to tell the truth, and to expose my ignorance." The old lady hardly ought to have sworn to that. Is there a member of this Senate who heard her evidence on that stand that believes the old lady was ever scared? Perhaps she thought she was when she gave her evidence here, but I would like to see the place where she could be scared. "I don't know that I thought of the premium at that time;" that is what she testified to at one point. By Mr. Stanton, on the same page (319):

"Q. Go on and state just what occurred? A. Well, as I stated, I received the money and I never thought a word about this premium; my grandson whispered to me and said 'grandma;' I don't know but he done this when the judge was after the money."

"My grandson whispered to me and said 'grandma.'" No, she thought again, "I don't know but he done this when the judge was after the money," so that it appears that she and her grandson talked the matter over about the premium whilst the judge was gone out of the office to raise the money, and yet it is undertaken to carry the idea that she did not think about the premium and did not know about the premium. At the bottom of page 322 I call the attention of the Senate:

"Q. Did your grandson mention any thing about the premium? A. I don't recollect as he mentioned any thing about it to Mr. Prindle particularly, but he spoke low to me about it, and I told him not to interfere with Mr. Prindle's business at all. I supposed Mr. Prindle was to do the whole business, and I did not wish *him* to interfere with the business at all."

Now, did the old lady know any thing about the premium or did she not? She testifies at one time she didn't think about it, she was scared. At another time she says her grandson spoke to her low about the premium. At another time she says, while Mr. Prindle was gone after the money he told her about the premium, and yet she testifies she did not think about the premium. Are senators prepared to say upon evidence of this kind that the respondent took advantage of this old lady — of her ignorance, when her grandson told her repeatedly or spoke to her repeatedly about the premium? See also page 326. I call the attention of senators to

that page; question by Senator Perry: "How soon after you sold the bonds to the judge did it occur to you that there was a premium due upon them?" She had already stated that her grandson whispered to her and told her of it while the judge was gone, and in answer to the senator's question, she says: "when I got out into the wagon with my grandson he says, 'grandma, what have you done to-day?' Did you return and see the judge about it? No, sir; because I had made the bargain then and I did not make any such child's bargains." Now is there any taking advantage of the ignorance of this person and the grandson in regard to the premium? Let us look a little further at her testimony. And I call the attention of senators to page 325:

"By Senator PALMER:

Q. Do you know whether, when your husband bought these bonds, he paid par for them? A. We paid a premium on these bonds, and my husband complained about the premium, too."

She knows that fact now. Did not she know it when she sold the bonds?

"Q. Can you tell what the premium was? A. No, I cannot tell you any thing about it; if you knew how I was situated under such circumstances, when I was expecting my husband to die every day, you would not expect me to remember it; we got Elihu Thompson to attend to the bond business, and my attention was not upon bonds or upon money; it was upon my husband; so please excuse me about my memory in that respect.

Q. You don't remember how much premium you paid? A. I don't, but I know my husband felt dissatisfied. He said it was a very big premium.

Q. Are you sure you paid a premium? A. Oh, yes; I know it.

Q. Did it occur to you then, when you went to dispose of them, that they might be worth a premium? A. I was not thinking any thing about premium at the time I sold them. I was thinking that this was surrogate business all the time. Now, that is the truth. I acknowledge that I am an ignorant old lady, but that is the truth, gentlemen."

What an answer to make!

"Q. If you had thought of it, would you have known that they were worth a premium? A. No, sir; I should not have let them go short of the premium."

She testified she should not let them go short of the premium in case she thought of it.

"Q. You don't understand me; you say you bought these bonds, and paid a premium for them? A. Mr. Hook did.

Q. And then I asked whether if you had thought of the premium that had been paid for them, you would have known that they were worth a premium? A. Why, I would have known if I had thought any thing about it."

Now can it be possible that anybody can claim that she was deceived, and did not know about the premium upon these bonds; didn't know there was a premium upon these bonds; and didn't have it in her mind when her grandson spoke to her about it on these different occasions, when she sold the bonds?

Senator MURPHY — Mr. Prindle: I was not here when this testimony was taken, and, therefore, I have to grope my way. Is it the fact that this was her own property and not the property of the estate of her first husband?

Mr. PRINDLE — I claim it was her own property, but came to her by the will of her first husband.

Senator D. P. WOOD — Willed direct to her by her husband?

Mr. PRINDLE — I will allude to that before I get through with this charge. It is alleged as an important portion of this charge that he persuaded her to sell him these bonds. What was the fact? Senator Perry asked this question: "How did you come to take that certificate with you that day? for what purpose did you take it?" It will be recollected by senators that she had a certificate from the bank showing that these bonds were deposited in the bank. I am reading from page 325:

"A. I will tell you; we got started part of the way for Norwich, when all at once it struck my mind, and I said to myself, 'Now I am going right there, and I don't know but what it would be a good idea for me to help this boy; I will take it, and if I dispose of it, well and good, and if I don't dispose of it, well and good;' I didn't consult him about it; had I done so he could have said at once, 'Grandma, I will take those bonds;' but I didn't.

Q. Then did you turn and go back and get the certificate? A. Yes, sir; I stopped at Mr. Miller's, and my grandson went and got the certificate.

Q. And then you took it to Judge Prindle's office? A. Yes, sir.

Q. When you got there, who first spoke about the certificate, you or he? A. I cannot tell.

Q. Did you tell him that you had the certificate? A. I cannot tell; I think it likely enough that I did.

Q. Did you tell him that you wanted to dispose of those bonds?

A. Yes, sir; I presume that I did tell him that I was going to the bank for that purpose; I think I did.

Q. Did you show him the certificate then? A. I don't know whether I did or not."

They charge that he persuaded her to sell these bonds when the proof is that she started and got part way to Norwich village with her grandson, and then happened to think that she desired to sell these bonds to procure the money for her grandson to take west, and they both stopped, and the grandson went back and procured this certificate for the very purpose of bringing it to Norwich to dispose of these bonds and obtain the money on that day. Did the respondent persuade her to sell the bonds? Is there any proof of that kind? Who first suggested the sale of the bonds? Did the respondent? On page 320 I read as follows:

"Q. Who suggested the sale of the bonds to Judge Prindle? A. I can't recollect whether or not I mentioned it first, or whether my grandson did, but I think I done it myself, for I didn't allow him to have any thing to do with it."

She swears distinctly that she thinks she first suggested the sale of the bonds to Judge Prindle. Is the charge proved that the respondent persuaded her to sell these bonds? Is there any thing in support of such a charge? Now, the evidence in the case shows that the respondent did not know what the premium was upon those bonds. I call the attention of senators to page 879. I believe the counsel has already read the respondent's own evidence on that branch, showing that he did not know what the premium was on these bonds. (Pp. 879 and 897.) He did not deal in bonds, although he had at one time previously purchased a few United States bonds, once in his life. He was not watching the newspapers like some of these men who have furnished money here to carry on this prosecution for the purpose of seeing what the price of bonds were.

Senator BENEDICT—Mr. Prindle, does it appear here why she went to the surrogate's office about these bonds? I don't remember.

Mr. PRINDLE—It appears she went to the surrogate's office for the purpose of having the will proved; that she took with her this certificate showing she had the bonds deposited for the purpose of selling the bonds.

Senator BENEDICT—Was not the will proved?

Mr. PRINDLE—It was after the will was proved that same day. After the business was completed, she swears she suggested the sale of the bonds to the respondent according to the best of her recollection. I was saying the respondent is not a man who watches the

newspapers to see the price of bonds. He did not know any thing about the price of bonds; he had some idea, probably, there was a premium upon the bonds; he testifies he did not know how much the premium upon these bonds were; neither, probably, did Mrs. Russell; their information was the same upon that point. He was not purchasing the bonds to sell again, to make money upon them. He has told you under what circumstances those bonds were purchased. He has told you of the arrangement he had with Mr. Dibble in regard to his payment in United States bonds of certain amounts due upon a mortgage. At the time that mortgage was due these bonds were at par, and I will speak upon that point right here. Mr. Dibble was a tanner and currier, doing business in the village of Norwich; he purchased the tannery of the respondent, and gave back a mortgage, and the mortgage became due several years ago; but Mr. Dibble was making money, as was supposed then, in his business; he desired not to pay this mortgage; he desired to use the money for capital in his business, to make more with. The respondent had a right to call upon him for the money due upon the mortgage; he wanted to invest it in government bonds; preferred to have it invested in government bonds. Dibble says to him, let me use this money, let me use it to make money with in my business, and if bonds increase in value I will pay you, when I come to pay this mortgage, in government bonds at par. I will pay the premium; let me use this money. That was the arrangement that the respondent had with Dibble, and the counsel talks about the statute of usury. I ask if there was any thing wrong in that arrangement of the respondent and Dibble? any thing morally wrong even in the transaction? If there was, I fail entirely to see it. Now, when Mrs. Hook was anxious to sell these bonds, the respondent at once thought of the arrangement he had with Mr. Dibble; he tells the old lady that he thinks he knows where the money can be obtained. He goes to see Dibble; he tells him about the matter, and Dibble goes to the bank to raise the money, and they consent to give him the money if the respondent will indorse the note, which is done, and the money is raised and the bonds are purchased, really for the benefit of Mr. Dibble, if he honestly intended to carry out the honest contract he had made in regard to the payment of this mortgage, and the respondent was not benefited one cent by the transaction. A desperate effort was made in this case on behalf of the prosecution to show that the respondent went to the bank that day for the purpose of ascertaining the price of those bonds, but the attempt not only failed, but showed conclu-

sively, I think, that he did not go to the bank on that day at all. Warren Newton and Albert C. Latham, one the cashier and the other the teller of the bank, were produced here as witnesses for the purpose of fastening, if possible, upon the respondent knowledge of the amount of premium upon these bonds on that 5th of August. Mrs. Russell swears that at the time the money was paid to her—at the time the bonds were purchased—she delivered over the certificate to the respondent. On page 320 she says:

"By Mr. STANTON:

Q. Did you sign or notice this certificate of deposit of the bonds? A. (Hesitatingly) I declare I can't remember.

Q. You delivered that to him, did you? A. Yes, sir; I handed that to him myself.

Q. At the time of the payment of the money? A. Yes, sir."

They prove positively, unqualifiedly, that at the time the money was paid and the transaction completed, the bonds purchased, she delivered over into his hands this certificate. That she did not do it before that. Now, both Mr. Latham and Mr. Newton testified that the first time he came into the bank he had the certificate in his hand. I call your attention to the evidence of Mr. Latham on page 330:

"Q. I understand you to say that Judge Prindle called there to inquire the value of those bonds? A. You misunderstood me; his first question was if the bonds were there.

Q. Then he had this certificate with him, did he? A. Yes, sir; then he made the inquiry what the bonds were worth; the first question was if the bonds were there in the possession of the bank at the time."

Mr. Latham distinctly says that the first time he came there to inquire about the bonds, in any manner whatever, he had the certificate in his hand, and he never carried the certificate to the bank of Norwich until he had completed the purchase of those bonds, because that was the time the certificate was delivered to him. Here is Mr. Latham's evidence on page 331:

"Senator PERRY—I had just propounded this question to the witness: whether, during the first interview, any thing was said by Judge Prindle to the witness or to Mr. Newton as to the manner in which this order should be drawn, in order to transfer these bonds, and he is now giving an answer to that question.

The WITNESS—I supposed that I had stated that—that he brought this ticket, and Mr. Newton replied that he wished the receipt of Mrs. Hook, the widow of Mr. Hook, upon the books of

the bank. That is our usual rule; that the receipts are taken opposite of the credits of the parties to whose name they stand. Mr. Newton replied that he knew that her husband was dead, and that he wished the receipt upon the books of the bank."

He says he brought the certificate. Here is the evidence of Mr. Newton on page 332: "Did he speak of these particular bonds, or bonds of a similar character—".

The PRESIDENT — The hour of nine o'clock having arrived, the Chair declares, if there is no motion made in regard to it, the further consideration of this case postponed until to-morrow morning at 10 o'clock. The Senate will now resolve itself into executive session.

ALBANY, *November* 22, 1872.

The Senate met at 10 o'clock, A. M., pursuant to adjournment.

The CLERK called the roll and eighteen senators announced their presence.

The PRESIDENT — Counsel for the respondent will proceed with his argument.

Mr. E. H. PRINDLE resumed his argument as follows:

Mr. PRESIDENT AND SENATORS: At the time of the adjournment last evening, I was calling the attention of the Senate to the evidence at pages 328, 330, 331 and 332, under the seventeenth charge, to show that according to the evidence of the cashier of the Bank of Norwich, and the teller of the Bank of Norwich, the respondent had this certificate in his hand at the time he first called at that bank. And inasmuch as he took the certificate at the time the purchase was made, he must have purchased the bonds previous to going to the bank, establishing the fact that the respondent did not go to the bank and ascertain the amount of premiums previous to the purchase.

Mr. Latham testifies at page 328, that he thinks respondent said he had purchased the bonds, at the first interview. The transfer upon the books in the bank was made December 26th, as I think, although in one place in the printed case I see it is put down as of the 16th; I think the transfer was made December 26, 1868; bonds were purchased on the 5th of August. Mr. Latham recollects this first interview as two or three months previous to that time. Mr. Latham also testifies that Mr. Newton wanted the receipt of Mrs. Hook at the first interview (pages 328 and 331); Mr. Newton recollects this at the second interview, at the time of the transfer on the books of the bank. Perhaps it is of but little consequence which

witness is correct in that respect; but it will be noticed, if Mr. Latham is correct that Mr. Newton desired the receipt of Mrs. Hook, the respondent could easily have complied with that desire by going to Mrs. Hook while she was still in the village of Norwich, and procuring a receipt; but the receipt never was procured, and this order that was obtained at the time was used instead of the receipt. Neither Mr. Latham nor Mr. Newton pretend to know whether he had purchased the bonds at the time of the first interview or not, except that Mr. Latham swears he thinks he told him he had purchased the bonds. The respondent swears he had no interview with him in the bank until a long time after the transaction. (Pages 899, 900.)

Now, Mrs. Russell testifies that he said he purchased the bonds, or he would purchase the bonds for orphan children, or something to that effect, at page 318. The respondent has testified as to what he did tell her in regard to infants. Now the respondent never said any thing about orphan children. He never used any such expression as that to the old lady. He told her that at some time previous he had had funds of infants in his hands, but that he had none then. How comes she by this expression in. relation to orphan children? Why, that was something that was talked about to the citizens of Chenango county during the campaign. She has had those terms instilled into her mind. She never heard them from the lips of this respondent. Why should the respondent tell her that he was purchasing the bonds with the funds of infant children? Why should the respondent tell her that falsehood? What could he hope to gain by that? Is it to be supposed that this woman was willing to sell her bonds for less than they were worth, because she supposed she was selling them for the benefit of orphan children? No! If she had desired to be benevolent toward orphan children, she would undoubtedly have selected those who had no money, who had no funds in the hands of the surrogate; she would have selected the destitute orphan rather than those who had funds in the hands of the surrogate. This talk about orphan children, I repeat, is something that she learned during the campaign; something that was gotten up for the purpose of prejudicing voters at the election last fall. Now, the bonds, as I have already remarked, were, to all intents and purposes, her bonds, as she testifies. I call your attention to pages 322 and 323; at the bottom of page 322:

"Q. This property was all willed to you, was it? A. Yes, sir.

Q. So that no other person had any interest in it? A. No one had any claim at all, not the least particle."

The respondent also testifies that she told him there were no debts; there were no others to complain of this transaction. The respondent's evidence on that point may be found at page 897.

Now, it has been claimed on the part of the counsel that these bonds belong to the estate of Mr. Hook; but I say, under this evidence, and in accordance with the facts, as they appear, these bonds practically and to all intents and purposes belonged to Mrs. Hook, and, as she says, no person had any interest in them whatever except herself — not a particle, to use her own language. They were willed to her by the will of Benjamin Hook; the will had been proved; letters testamentary had been issued to her; the business was all completed; every thing had been done in the surrogate's office that ever was to be done. The old lady testifies that there was no necessity for any appraisal; no inventory made and no settlement of the estate before the surrogate contemplated, and none has ever been made or ever will be made. She was the executrix of this will, and the legatee to whom the bonds were given.

Senator BENEDICT — Sole executor?

Mr. PRINDLE — Sole executor. Now, whether these bonds may be said to be in her hands at that time as executrix, or as legatee, is a matter of no sort of practical consequence.

Whether she is presumed, as executrix, to have delivered these over to herself as legatee, and to hold them as legatee, or whether she held them as executrix, is of no practical account. They were hers as legatee as much as they ever will be, and if she should live to be 100 years old no change will take place. They were hers; no other person interested in them. She had a right to dispose of them as she saw fit, and the respondent, because he happened to hold the office of surrogate, was in no way prohibited, as a citizen, from purchasing those bonds if he saw fit to do it. Now, the fact that a year or two afterward, the respondent exchanged these bonds for the bonds of the Midland Railroad Company has nothing to do with this case. It makes no difference what was done with the bonds by the respondent afterward. He did exchange them for bonds of the Midland railroad, although Mr. Mason testifies that he sent them to New York. I will call your attention to his evidence, merely to show that Mr. Mason is mistaken, at page 345:

"Q. Do you know Judge Prindle had the bonds sent to New York? A. Yes, sir.

Q. Are you sure of that? A. Yes, sir.

Q. Didn't he exchange them for Midland bonds? A. No, sir; took Midland bonds in exchange, but they were sent to New York for him."

Now I will call your attention to page 893. You find the receipt of the treasurer of the Midland Railroad Company, which shows precisely what the transaction was, and it shows how easy a matter it is for a witness to be totally mistaken in regard to a transaction that occurred years ago. Here is an intelligent young man (Mr. Mason), a clerk in the railroad office, swearing to a transaction that occurred in 1869, that he was personally knowing to, and swearing positively, and yet totally mistaken in regard to that transaction. Now, if he can be mistaken in regard to that transaction, may not other witnesses, who have poorer memory perhaps than Mr. Mason, be mistaken in regard to the transactions that they testify to? But I read the receipt:

"NEW YORK AND OSWEGO MIDLAND RAILROAD,
TREASURER'S OFFICE,
NORWICH, N. Y., *November* 2, 1869.

Received of H. G. Prindle $10,700 in 5-20 U. S. Government bonds, and $100 in currency, for which consideration I do hereby agree to deliver to said Prindle $13,000 of the first mortgage bonds of the New York and Oswego Midland railroad on demand.

November 2, 1869.

WALTER M. CONKEY,
Treasurer."

Senator TIEMANN — Does it say that $10,000 as a part of Mrs. Hook's bonds?

Mr. PRINDLE — I think the bonds were included in that exchange. I do not consider it is very material. My main object in calling your attention to this evidence was, to show how easy a matter it was for a witness to be totally mistaken in regard to a transaction, and to show that you ought to look with caution upon evidence given by witnesses here, of transactions which occurred years ago.

Senator BENEDICT — How does the witness state the transaction?

Mr. PRINDLE — He states positively that the respondent sent the bonds to the city of New York to have them sold, and there purchased bonds of the Midland Railroad Company, while the receipt shows that they were exchanged, and the agreement was that Midland railroad bonds were to be delivered in exchange.

The Midland Railroad Company sent them to New York. If you read the receipt you will see just what the transaction was.

Senator BENEDICT — That don't say they sent them to New York,

Mr. PRINDLE — No, it does not, but I suppose they did in fact.

Mr. STANTON — It shows that the Midland bonds were to be delivered at a future date. That is what Mr. Mason testifies to substantially.

Mr. PRINDLE—I will not spend any more time on this charge; it is a transaction that occurred years ago; a simple business transaction; totally disconnected with the official duties of the respondent, and in my humble judgment a charge that should never have been brought before this body.

I will next call your attention to the fifth charge; where the respondent brought a suit in the Supreme Court for Austin Barrows, an executor, contrary to the statute.

Now, there is no doubt that the respondent did bring the action contrary to the statute. Mr. Barrows' evidence may be found at page 346. I remark in the first place in regard to his charge that this was not an official act on the part of the respondent as surrogate. It was an act as an attorney and counselor of the Supreme Court of the State of New York; and if the respondent is responsible at all for having brought this suit he is responsible as an attorney and counselor of the court, and not otherwise. I remark in the second place that he did not violate the law, as charged, corruptly or willfully, because he did not know there was such a law.

Now, it is utterly impossible that he could have acted willfully; that he could willfully violate a statute without knowing that there was such a statute. Impossible that he could do it willfully and corruptly without knowing that there was such a statute, and he testifies, at page 893, that he did not know of this statute.

"Q. Did it occur to you that there was any statute forbidding you to so act? A. I did not know there was any such statute until this trouble commenced; there have been but two or three instances where I have ever done it at all; I was employed in some cases before my election which I tried afterward, where executors and administrators were concerned; had I known of the statute, I most certainly should not have done it."

Now, I say that probably not one lawyer in twenty knew any thing about this law, and I speak from considerable experience as to the views of other lawyers upon this point, for I have heard the case talked of a great deal among lawyers, and I venture to say that not one lawyer in twenty, in the State of New York, knew that

there was a statute forbidding surrogates to appear where executors were concerned.

There is no charge made of ignorance in this case. You are not asked to remove the respondent because he is ignorant, although he was ignorant, in common with the great majority of lawyers, of this statute, and I call the attention of the Senate to the fact that even as eminent a jurist as Judge Boardman, who was a witness in this case, had never had his attention called to this statute, and did not know of it. He did not know whether the law applied to such a case as this, and so testified in your hearing, and I call your attention to his evidence at page 614:

"By D. P. WOOD:

Q. Judge Boardman, had you known, or had it occurred to you that the attorney was the surrogate, having jurisdiction of this estate about which this order was made, would you have made the order? A. I think I should; I hardly know whether I should or not.

Q. Perhaps my question was not quite full enough; had you been apprised of all the facts that you now have in relation to the attorney being surrogate of the county of Chenango, would you then have granted the order? A. I never had my attention called to the statute prohibiting them in acting in such cases; and, perhaps, if my attention had been called to it, when I had looked at the statute, I should certainly have been governed by that, whatever it was; but I could not say whether it applies to such a case of which you speak of now."

Now, it so happened that Judge Boardman, as is probably known to many of the lawyers of this Senate, had been county judge and surrogate himself. He has been for years a justice of the Supreme Court, adorning the bench of the Supreme Court by his eminent learning and ability, and, even after all this excitement, and these publications in the newspapers in regard to this case throughout the State, comes before you and testifies that his attention has never been called to the statute, and he did not know whether it applied to this case or not, or whether he would have granted the order or not if he had been apprised of the statute, or if he had been apprised of the facts, but he thought he would. Are you going to remove the respondent in this case because innocently he practiced law in the Supreme Court, not knowing of this statute, and not intending any thing willfully or corrupt; intending no violation of the statute, when as eminent a jurist as Judge Boardman comes before you and says he knows nothing of it? It

seems to me hardly possible that senators can be brought to such action. Bear in mind that the charge in this case is not that the respondent took any exorbitant fee; not that he charged too much; not that he has taken any thing wrongfully out of the executor or the estate, but that he willfully and corruptly violated the law, and that is the only charge; a charge that the facts disprove beyond all question. Now, will you say that he charged too much in this case; that he obtained too large a fee? Where is the proof of it? Has a witness been called upon the stand to testify that the services were not worth $350—the whole expense of the suit—services of both attorneys and the disbursements of the case? Not one! The only proof upon this point is the evidence of George W. Ray, an attorney and counselor of the Supreme Court, who says that the services were amply worth that amount, and that is the only proof upon that point in the case; but there is no charge that he charged too much. The gist of the charge is entirely unproven.

The counsel said in his opening "I need not say to lawyers in this Senate, that no gross sum of that kind could be ordered to any attorney in a case of that kind, but that the fees and costs of any attorney, legitimately employed, must have been taxed under the law, and could not be fixed in the gross sum." (Page 288 of the counsel's opening.) And when he came to sum up the cause, he tells you how much could have been properly charged under the fee bill according to the Code. Well, the counsel spoke with a great deal of assurance. He says that he need not tell the lawyers of this Senate that no such gross sum could be allowed. I agree with him, that he need not tell them so, because he was entirely in error. He misapprehended the law. He differs with the judges of the Court of Appeals upon this question, as I will show you. I read from the 28th New York Reports, page 189, *Rose* v. *Rose Association*. I will read only a few words from the opinion of Judge Mullin. I desire to call the attention of the lawyers of the Senate particularly to his language:

Senator MURPHY—Is that a case that has already been cited?

Mr. PRINDLE—No, sir. "It is true that the Code makes provision for an extra allowance, in cases in which equity heretofore granted such allowance to trustees and others. But such allowance is not given to a trustee, unless he is plaintiff and recovers judgment. If he is defendant and succeeds in his defense, or if he is plaintiff and is defeated, he is not entitled to any indemnity. It was never the intention of the legislature to compel a trustee to carry on litigation

in defense, or for the enforcement of the rights of the person or estate represented, out of his own pocket. Such a rule would put an end to all trusts, for the want of persons to accept the burdens and responsibilities of them. No man would take upon himself the cares of the estates of others, knowing that he must bear the expenses of litigation without indemnity. I entertain no doubt but that it is still in the power of the courts having equity jurisdiction to allow to trustees and others, suing or defending in *autre droit*, such reasonable counsel fees and disbursements, in addition to the costs given by the Code, as they may deem sufficient to indemnify them against loss. Nor do I doubt that such courts have the power to award costs to any or all of the persons made parties in actions for the construction of wills, and in relation to charities, as they shall deem proper, the jurisdiction of those courts to award costs not having been interfered with by the Code."

Evidently, Judge Mullin, with the Court of Appeals, differed with the counsel who opened and summed up this cause, although he spoke with so much assurance on that point. There is no doubt about the law. This was not a case where costs should be taxed under the fee bill according to the Code. It was a proper case for a gross allowance such as the court saw fit to make, and the counsel is entirely mistaken in his idea of the law applicable to the case. You recollect what the language of the court was "in *actions* for the construction of wills, and in relations to charities," this precise case, and I will call your attention to the will.

Senator BENEDICT—Was there any hearing in court in this case?

Mr. PRINDLE—The order was obtained at court.

Senator BENEDICT—That was under the stipulation, as I understand.

Mr. PRINDLE—There was no stipulation in regard to costs.

Senator BENEDICT—Was the case itself ever heard in court?

Mr. PRINDLE—It was brought up in court on a stipulation and judgment taken.

Senator BENEDICT—That was not a hearing, of course.

Mr. PRINDLE—There was a hearing, of course, but the evidence was not taken because the judgment was taken upon a stipulation, but the costs were awarded by the court without any stipulation in regard to costs.

Senator AMES—Was that particular subject called to the attention of the court?

Mr. PRINDLE—The way the evidence stands is this: This was a case occurring several years ago; Judge Boardman has been called

I paid out of that $37 and some cents that I got, and it was all included in that charge of $50; the account shows it.

Q. Didn't Mr. Barrows pay you more than the $34.57? A. No, sir.

Q. Didn't he pay you a small sum which was coming out of his own fees in the case? A. Not a cent; he declined to do it; he didn't decline; I didn't ask him to; but he said he didn't want to pay any thing out of his own pocket, for he hadn't got pay enough in the case already to satisfy him for his trouble, and I don't think he did; he was to a good deal of trouble and expense in the matter, and his commission was small compared to the work he did; I don't think he got too much pay.

Q. How did you come to be employed by the defendants to appear for them in the matter? A. I think it was suggested by me.

Q. Suggested by you? A. I think so; no, I think not; I think it was suggested by Judge Prindle that if some attorney could be obtained to appear for all the defendants, it would save publication fee, and it would be no worse to the estate to pay a lawyer for services in the matter than it would be to pay it to the printers for publication fee, and he went to work then and got all these consents.

Q. Then you appeared for the defendants at the suggestion of Judge Prindle, first getting their permission to appear? A. I think I said I got their permission; I did not appear at the suggestion of Judge Prindle.

Q. Did those defendants pay you any thing for your services? A. No, sir; not a cent.

Q. Then your pay for services in this suit came from Judge Prindle? A. Yes, sir.

Q. How much did he pay you? A. Seventy-five dollars for my services in that suit as attorney for the defendants."

It will be recollected that he also paid him $25 in the matter of the final accounting, so that $100 out of the $350 went to the attorney for the defendant.

"Q. Were you at Cooperstown at the time that order was obtained at the term of court? A. I couldn't tell; I have been at Cooperstown at court."

On page 800 it says:

"Q. You never paid any further attention to that part of it? A. I considered it, for all the costs to me, and Judge Prindle, and for all the costs and trouble in the matter, fair and honest; Mr. Barrows thought it was fair, and he said he was willing it should go so."

That is the only evidence there is in this case in regard to the

value of the services. The only evidence is that it was worth that amount. Well, some attorneys might consider $250 a large amount for the services and the expenses, and some would consider it a small amount. Attorneys' views differ, and they put different value on their services.

It appears, in evidence, that the respondent had to travel to Cooperstown, and in those days, before we had any railroads, it was worth quite an amount. But there is no charge — no evidence that the services were not worth the sum received. There is nothing to act upon in relation to that matter. And if a man is to be removed from office because, at some time in his life he has charged more than he ought as a lawyer, I am afraid few of us would escape, if we should get into office.

SENATORS — That's so; that's so.

Mr. PRINDLE — It is natural enough for a lawyer to take a large fee, if he can get one. The best lawyers in the State of New York, and the best lawyers in the whole country, sometimes charge an extraordinary fee, and receive it.

Senator TIEMANN — They don't always get the biggest.

Mr. PRINDLE — No, they do not, but as a general rule I think attorneys charge as much as they can get. The counsel who summed up this cause seemed to have such a prejudice against this young man, Mr. Ray, whom you have seen before you, gentlemen, that he actually thought he had no business to practice law in the Supreme Court, and he finds fault because Mr. Ray was attorney for the defendants and appeared as attorney for defendants. The charge is broadly made that he appeared without any authority, and when Mr. Ray was upon the stand he asked him the question, "By what authority did you appear for these defendants? Did you have written authority?" Mr. Ray says, "I did, sir," and he produced a bundle of papers here showing ample authority; a large number of papers from all of these defendants, showing that he was regularly employed by every defendant for whom he appeared, and had regular written authority for it. What becomes of this charge that the surrogate's clerk, without any authority from these defendants, appeared? Will the gentleman pretend to claim that George W. Ray, holding authority from the Supreme Court to practice in that court, had no right to appear for these defendants, because, if you please, he was the clerk of the surrogate? Conceding that, for the sake of the argument, he had just as good a right to appear for the defendants as the counsel upon the other side if he had had these written authorities, and if any one is to be responsible for what occurred in that

suit — if any fault is to be found on the part of these defendants, let them look to their attorney who is responsible to them; no other person is responsible; this judgment was taken upon his stipulation; have they found any fault — have these defendants found any fault with the action of this attorney in the matter? Is there any evidence of it? Who finds fault in regard to this transaction? Who has a right to complain? Certainly nobody but these defendants. Who was the attorney who conducted the proceedings? Who stipulated? If any fault is to be found, and anybody is to be held responsible for this transaction, let the parties who have a right to complain hold their attorney responsible and look to him for the remedy. Now, this is one of the cases in which if a man was ever going to charge a respectable fee he would do it. All the specific legacies in this will were paid, and the remainder was to be divided among a number of societies. Suppose the costs had been reduced $50 or $100, and the small balance had been divided up among these different societies, what would it have amounted to? I say it is one of those cases in which a lawyer, if he was ever going to charge a respectable fee, would be very likely to do it. Now, there is no pretense in this case that this order was irregularly obtained of the Supreme Court fixing the amount of the costs. There is no pretense that the judge was deceived; there is no pretense that there was irregularity about it. The proceedings were all regularly conducted in open court, and whatever the respondent did in that matter he did simply as an attorney and counselor of the court, and not in any other official capacity. Upon this point I call your attention to the evidence of Judge Boardman, at page 614:

"By Mr. MYGATT:

Q. I wish to ask you one question; can you state here with certainty that Judge Prindle did not state to you the amount of costs and counsel fees that were fixed? A. Oh, no, sir, I cannot; I have no recollection about it at all."

Judge Boardman does not pretend to swear that Judge Prindle did not tell him at the time the order was obtained the exact amount of the counsel fee and costs; no pretense that there is any irregularity; no pretense that there was any fraud upon the part of the respondent in obtaining this judgment.

Now, I will call your attention to another fact, that these parties who were defendants were scattered over a wide extent of territory, and that a great deal of trouble was necessarily taken to get service or admission of service upon them; one of them, you recollect, resided in Turkey, and they were scattered far and wide; it was

worth something to bring this suit; there was something depending upon it; title to real estate was involved, and it was worth something to bring this suit and conduct it to judgment; and the lawyer has not been found to come before this body and swear that it was not worth the amount received. Now, I say that every thing the respondent did in this case he did as an attorney and counselor of the Supreme Court, except upon the final accounting. I say that he gained nothing by the fact that he was surrogate; he did not obtain any power to recover these costs from the fact that he was surrogate; he had no advantage in that respect over what he would have had if he had not been surrogate. He obtained that order; did the fact that he was surrogate help him to obtain it? He obtained it as an attorney and counselor. The judge did not know that he was the surrogate. He never thought of his being a surrogate. Was it to his advantage in this transaction that he was the surrogate? Not at all! He gained nothing at all by it. He did what any other counsel would have done, obtained the order for judgment for $350. Now, then, how stands it on the accounting? Counsel says he allowed the $350. Would any other surrogate have refused to allow $350 paid by the executor in accordance with a judgment of the Supreme Court? Could any other surrogate have done different than to have allowed that sum? Certainly not. The executor paid that sum in obedience to the order of the Supreme Court; in obedience to the order of the Supreme Court commanding him to pay the $350. Could this surrogate or any other surrogate refuse to allow that sum on his final accounting? Most assuredly not. Therefore, I say every thing the respondent did in this case, he did as an attorney and counselor of the Supreme Court, and is responsible to this court, and not in any other capacity. Technically, he violated the law. He did not know the law. I have no doubt that the lawyers in this Senate know of surrogates who have brought suits in behalf of executors and against executors repeatedly. I know of instances in which they have done it; done it in violation of the statute, but not willfully or corruptly; not knowing or thinking of the law.

I will here notice the fiftieth charge, because it is in relation to the violation of the same statute, and there is some proof that in two or three other instances the respondent brought or tried suits where executors were concerned. In one or two cases the suits were commenced by him before he was elected, and finished up after he was elected, and, according to Mr. Newton's theory of the law, he would have no jurisdiction in those cases as surrogate, and he would have to try the cases and finish them. There was one case where I was

attorney on behalf of the plaintiff. The suit was brought against Mr. Randle, executor of William Snow, by Bela B. Cotten, for services rendered to the deceased during his last sickness, and the simple question to be tried was, what were those services worth? My duties at the time called me away, so I could not try the cause myself, and my partner not being in the habit of summing up cases, the respondent came in and summed up the cause. No person thought of his violating the law. I never thought of it. The judge who tried the case never thought of it. No question was raised in regard to it; an entirely harmless and innocent action.

Now, counsel says that the respondent is bound to know the law, and that it is no defense that he did not know the law. Why, law is founded upon common sense, and is that common sense? If I violate a statute in regard to a transaction, not wrong in itself, but merely wrong because it is prohibited by the statute, is it common sense to hold me because I didn't happen to know the law? That rule applies where a transaction is bad in itself; where it is wrong in itself. Then it is no excuse that a person does not know the law, but where a transaction is wrong only because it happens to be prohibited by the statute, there the rule that the counsel cites does not apply and ought not to apply. You might just as well say that Judge Murray, who allowed the surrogate to appear before him, knowing his position, ought to be removed from office for having violated this law, as to say the respondent ought to be removed. You might just as well say that Judge Boardman, who adorns the bench of the Supreme Court of this State, ought to be removed because he granted this order, knowing that Judge Prindle was a surrogate; when Judge Boardman comes before you and tells you that his attention had never been called to the law, and he did not know that it applied in such a case. The argument will not stand; it is not founded upon common sense. It is not necessary for me to dwell upon this branch of the case; because the lawyers of the Senate know that this law has been overlooked by surrogates in this State, and they have brought suits for the foreclosure of mortgages on behalf of executors, and in other cases without knowing any thing about this law, the respondent among the rest; and it is no ground for his removal.

I will next call your attention to the forty-seventh charge. The gravamen of that charge is that the respondent caused to be made known his decision in advance, and caused to be made known whom he would appoint commissioners, whereby an undue advantage was gained in the case of the bonding of the town of Smithville. David

L. Follett, an attorney and counselor of the Supreme Court, residing at Norwich, was the attorney for the contestants in that transaction, and he is the real accuser in this case; he is the real author of this charge. And I want to call the attention of the Senate to the affidavit that he makes, and that is printed here in connection with these charges at page 177 of the charges:

"STATE OF NEW YORK, } ss.:
CHENANGO COUNTY, }

David L. Follett, of the village of Norwich, county and State aforesaid, being duly sworn, deposes and says that he was the attorney for and in behalf of the contestants in the proceedings mentioned in the forty-seventh charge preferred against Horace G. Prindle, county judge of Chenango county, hereto annexed; that he has read the same, knows the contents thereof, and that the statements of facts therein contained are substantially true."

Now, I ask the Senate to recollect that his affidavit is that the entire charge is true substantially; that word "substantially" is put in, being the only qualifying word in the affidavit. He swears positively, without qualification, that the charge, in its length, breadth and scope, is substantially true. I will call your attention to another affidavit that we proved he made in court at page 624. This affidavit was made in court, at the village of Norwich.

"THE PEOPLE *ex rel.* WARREN LOOMIS AND CHAUNCEY S. BROWN
against
CHARLES P. TARBELL, SILAS L. RHODES AND JAMES HAZZARD, Railroad Commissioners of the town of Smithville, and the CENTRAL VALLEY RAILROAD CO.

"STATE OF NEW YORK, } ss.:
CHENANGO COUNTY, }

David L. Follett, of the village of Norwich, county and State aforesaid, being duly sworn, deposes and says, that upon the trial of the above-entitled matter before the county judge of Chenango county, he appeared as one of the attorneys for the contestants, and ever since has continued to act as attorney for the contestants herein. That on the 24th of December, 1870, about 11 o'clock A. M., this deponent was informed by the county judge of Chenango county that he had determined to decide this matter in favor of the applicants, and to declare the town legally bonded. That about two

o'clock in the afternoon of that day, this deponent was in the office of the clerk of the county of Chenango, and while in said office, between the hours of two and four P. M., of that day, said county judge entered said office, filed his decision and his appointment of commissioners thereunder. That at the time of filing of the aforesaid decision, the bonds issued in pursuance of said decision lay before the county clerk of said county, already signed by the said commissioners so appointed by said decision and appointment. That said bonds had then been printed or engraved with the name of one of the commissioners printed or engraved in each of the coupons attached. That the paper hereto annexed marked 'A' is a copy of one of the aforesaid bonds. That at the time that said county judge filed his aforesaid decision, the county clerk of said county was engaged in registering said bonds. That on that day, or on Monday, December 26, 1870, it was announced that said bonds had been transferred, but to whom or where this deponent is unable to state, though he has made diligent inquiry to ascertain.

DAVID L. FOLLETT."

I have taken pains to bring before this Senate the bond attached, in order that the Senate may see how much truth there was in the affidavit made by David L. Follett at the time, and how much reason he had to believe that his affidavit was true. He testifies in this case that the bond perhaps was not actually attached, but considered attached, and was one of the bonds filed in the county clerk's office under the law. Now, there were two bonds filed in the county clerk's office, and only two, and one of these bonds (these bonds differing in denomination only) was the bond considered as attached to his affidavit, and marked as Exhibit "A." The clerk testifies that the $500 bond is the one. It makes no difference which it was. He swears positively—a lawyer—the lawyer conducting the case—the lawyer who had had his attention called to every particular of the transaction—the lawyer who had the bond before him, and examined it at the time—swearing it was attached to the affidavit, "that said bonds had been printed or engraved with the name of one of the commissioners printed or engraved in each of the coupons attached; the author of this charge; the man who had more to do with this prosecution before the Senate than any other one individual; making an affidavit so utterly false as the one I have read in your hearing. Was there ever a name printed or engraved to each one of the coupons attached; was there a name even signed there? why he swears in this case that the name had been clipped out, but there

was never a name there, and certainly there was never a name printed or engraved in those bonds. One of the commissioners, it is true, previous to the filing of the decision, did sign his name to the coupons on the bonds before the decision was made. But no name was ever printed or engraved, and yet David L. Follett is found swearing positively in court, and without qualification, that the bonds had the name of the commissioner printed or engraved in these.

Senator BENEDICT—Was there a name there that was clipped out?

Mr. PRINDLE—Never. That was clipped out at the bank. It was proven positively, and the bond itself shows that there never could have been a name there.

Mr. PECKHAM—The other bond had the name of the commissioner signed.

Mr. PRINDLE—The other bond had the name of the commissioner signed in his own handwriting, but where is the evidence that the name of a commissioner was printed or engraved in that bond? I ask the learned counsel where was the authority for David L. Follett to swear that the name of a commissioner was printed or engraved in that bond?

Senator BENEDICT—Have you one of those bonds here?

Mr. PRINDLE—The bond here is the one he had attached to his affidavit; considered attached, he says, and not actually attached.

Senator LEWIS—These are the ones that were on file in the clerk's office.

Senator BENEDICT—I understand that the others, except this one, had the name of one commissioner signed in the coupon.

Mr. PRINDLE—Yes sir, and not printed or engraved.

Senator BENEDICT—How does it appear that that is the one?

Mr. PRINDLE—The clerk testifies to it. It was used before the Senate and admitted here. The two bonds that I have here are both alike except in denomination; they were required to be filed in the clerk's office under the law.

Senator AMES—These bonds themselves were filed at that time?

Mr. PRINDLE—Yes, sir.

Senator AMES—They were never signed?

Mr. PRINDLE—The clerk swears there was never a name in them at all.

Senator D. P. WOOD—If they were filed they would not be signed: used merely as a blank.

Mr. PRINDLE—I will call the attention of the Senate to the evidence at page 616, and I call the attention of the Senate to the

difference between his evidence when he is here upon the stand, where he can be cross-examined, and the evidence that he gave in his two affidavits:

"Q. Were those coupons also signed by the commissioners? A. They had one of the commissioners' names in them; whether they were signed or lithographed, I can't say; I didn't examine them closely; they had the name in."

On his direct examination, when he comes here into the presence of this body, where he can be cross-examined, he says he did not examine the names closely, and could not say whether they were signed or lithographed; but in his affidavit he swore positively, and without qualification, that they were either printed or engraved. How much reliance can be placed upon the evidence of a man who is willing, for the purpose of ruining the respondent, to testify unqualifiedly that the name was either lithographed or engraved, when he did not examine closely, and swears here on his direct examination that he could not tell whether it was signed or lithographed? I call your attention to his cross-examination, commencing at page 619:

"Q. What bond was it that you had attached to this affidavit marked 'A'? A. It was the bond that was on file in the clerk's office; under the law, one of the bonds is required to be deposited with the clerk, and when that affidavit was used in court one of those bonds was temporarily attached.

Q. Was it temporarily attached or considered attached? A. Well, perhaps considered attached; it was brought into court," and mark you, he says it was brought into court, where he could look at it; "I don't know whether it was actually attached or considered attached.

Q. Did you know of your own knowledge, Mr. Follett, that the bonds were printed or engraved with the name of one of the commissioners printed or engraved in each of the coupons attached? A. I so understood; that they were printed.

Q. I don't ask you what you understood? A. No, I didn't; I didn't see them printed; I couldn't swear from my examination whether the signature in the coupons was lithographed, or engraved or signed.

Q. But in this affidavit you swear like this: 'That said bonds had then been printed or engraved, with the name of one of the commissioners printed or engraved in each of the coupons attached!' A. I did so swear.

Q. Did you know that fact? A. I so understood it at the time.

Q. Did you know of your own knowledge? A. No, sir; I didn't see them printed; yet they looked to me like lithographed signatures.

Q. Yet you testified to that positively? A. I testified in that language; yes, sir.

Q. Now, do you know that any name of a commissioner was printed or engraved in the body of the bond? A. No, sir; except as a matter of judgment; I never saw the signature but once in my life and never have seen the bond since; that was over two years ago.

Q. Did you know personally at the time you made this affidavit on page 177 that the judge had made known his decision in advance to Charles P. Tarbell, Silas H. Rhodes and James Hazzard? A. I did not, only from the fact that they were there on the day it was filed."

Here we have a man testifying positively to this whole charge in all its length and breadth. He comes here, and on his examination says he knew nothing about it, except he inferred from the fact that they were there that day that the judge had informed them in advance what his decision was to be, and that they were to be the commissioners appointed.

"Q. Do you know of your own knowledge that he informed anybody in advance? A. No, sir.

Q. Did you know at the time when you made this affidavit that he had made known in advance to Charles P. Tarbell, Silas H. Rhodes and James Hazzard, or either of them, or anybody else, that he would appoint them commissioners? A. No, sir.

Q. Do you know it to-day? A. I think I do.

Q. I am asking whether you know of your own knowledge? A. Only from the information which I derived from the fact that all those men happened there the very day and hour that he filed his decision; I suppose they had previous knowledge; I have no other means of knowledge.

Q. Did you have any personal knowledge that he had informed Charles P. Tarbell, Silas H. Rhodes and James Hazzard, or anybody else that he would appoint them commissioners? A. None; excepting from the facts to which I have testified.

Q. Any personal knowledge? A. Yes; I had personal knowledge.

Q. From the fact that you saw them there? A. Yes, sir; and the decision being filed while they were there.

Q. How did you know, from the fact that you saw those men

there, that he had informed them that he would appoint them commissioners? A. I did not believe that they were prophets; I didn't think that they would know the exact time when that decision was to be made and filed, without they had been informed.

Q. I am asking about the fact that they were to be appointed commissioners? A. I refer to that, also.

Q. That was your only information? A. Yes, sir.

Q. Were there other persons there from the town of Smithville that day, except those three persons? A. I don't recollect that there were; yes, I think Mr. Crozier was there; there may have been others."

Previous to that, at page 616, this gentleman had testified:

"I saw several gentlemen from Smithville who had been active in favor of bonding the town, in that village."

At that particular time he did not recollect that he saw any one there but these commissioners, but finally recollected he saw Crozier, and previously, as it is contained on page 616, he testifies that he saw several from Smithville who had been active in bonding that town:

"Q. You speak of the judge filing the decision there in your presence; are you able to swear that that decision hadn't been filed in the clerk's office before that time? A. It bore no clerk's indorsement of having been filed."

He swears positively here that that paper at the time he was in there at two o'clock in the afternoon, bore no indorsement of having been filed; when we have the positive evidence of Mr. Merrifield, the assistant clerk, and Mr. Thompson, the clerk, that that paper was filed in the morning about nine o'clock of that day, and the indorsement was upon it, and Mr. Merrifield who done the business recollects particularly that he not only put the stamp on once, but twice. The first time owing to the fold of the paper the impression was only partially made and therefore he re-stamped it, so that it bore not only one but two indorsements, and yet Follett swears that at two o'clock it bore no indorsement, and he swears to it positively:

"Q. Will you swear positively as to that? A. I will.

Q. Is that the only knowledge you have of it? A. That is all the knowledge I have of it; the fact that it bore no indorsement, and he brought it in and handed it to the clerk.

Q. Are you able to state that that decision had not been previously filed in the clerk's office, and was simply taken for the pur-

pose of drawing the appointment of the commissioners and then put back again? A. Only from the facts that I have stated."

That is a mistake, it was taken for the purpose of drawing the subscription to the stock. Their appointment was attached to the judgment roll:

"Q. That is all the knowledge that you have? A. That is all the knowledge that I have.

Q. At the time you made that affidavit did you know personally of any undue advantage gained by having the bonds in the hands of innocent holders? A. I think I did."

He swears to that, that undue advantage was gained:

"Q. In whose hands did you know the bonds were? A. We never have been able to ascertain; at the time I made that affidavit, the commissioners, or some one in their behalf, made affidavits that the bonds had been transferred to innocent holders."

That is what he testifies to here, which is not true; no commissioner ever made affidavit that those bonds had been transferred to innocent holders; and Follett, in his previous affidavit in court, which I have read in your hearing, did not pretend to swear that the bonds had been transferred to innocent holders, or that he had ever heard any such thing; but here he is willing to swear that the bonds had been transferred to innocent holders; it turns out that it is not true, as you will recollect the evidence when I call your attention to it by and by. On page 622 he testifies:

"Q. You have already stated that fact; Mr. Follett, will you state whether there is now or ever has been any name attached to the bond or the coupon which was attached to this affidavit that you made? A. No, sir; those names are clipped out; they had been cut out; there was no name there at the time it was attached to that.

Q. Had you ever seen a name there? A. I don't know that I had ever seen that bond before; I had seen the original bonds.

Q. Did you ever see one of those bonds with the name in? A. I did see a large number of them.

Q. Previous to the filing of the decision? A. At the same time that the decision was filed.

Q. That you say the decision was filed? A. Yes, sir.

Q. Previous to that time when you say the decision was filed, have you any knowledge that there was any name? A. None whatever."

I call the attention of the Senate to the evidence of the clerk, Mr. James G. Thompson, at page 747:

"Q. Do you remember the circumstance of the judge coming in and leaving the judgment roll? A. I do.

Q. At what time of day should you say that was? A. I couldn't tell what time; it was about the middle of the afternoon; I was at work at the desk; Mr. Follett came into the office; picked up one of the bonds and made some joking remark about it, "you are coining money," or something like that.

Mr. PECKHAM — Never mind what Mr. Follett said.

The WITNESS — While there Judge Prindle came in and laid the judgment roll on the desk.

By Mr. E. H. PRINDLE:

Q. You didn't file it at that time? A. No, sir; it had already been filed.

Q. Who was it filed by? A. Mr. Merrifield filed it; at least he said he did; I did not see him do it.

Q. Your deputy? A. He was not at that time; he was principal clerk in the office at that time.

Cross-examination by Mr. STANTON:

Q. Mr. Thompson, do you know whether that judgment roll was filed previous to that time or not? A. I couldn't say that I actually looked at the filing of the paper; I knew it just as much as I knew any thing that I did not see myself."

Now I call your attention to page 831, to the evidence of Mr. Merrifield:

"Q. Do you recollect when the judgment roll in that matter was filed, when the judgment was filed in the office? A. I do, sir.

Q. Do you recollect the time of day it was filed? A. Yes, sir, about nine o'clock in the morning.

Q. Who filed the judgment roll? A. Judge Prindle.

Q. Did you receive it from Judge Prindle? A. I did; I received it from Judge Prindle, and filed it myself with a stamp in the office.

Q. Do you recollect any circumstances about filing it yourself, personally? A. Yes, I know more particularly from having stamped it twice, for the reason that the first time, the paper being folded on the inside, only admitted the half of the stamp being visible; the other stamp I placed upon the right hand side a little, and had the full impression of the stamp.

Q. You stamped it with an instrument? A. Yes, sir.

Q. Do you remember Mr. Follett's being in the office that day? A. Yes, sir.

Q. Was it along before that that the paper had been filed? A. Yes, sir; Mr. Follett didn't come in until afternoon, while the bonds were being registered."

The respondent himself also testified at page 880 as to having gone in there and having filed the judgment in the morning, in accordance with the evidence of Mr. Thompson and Mr. Merrifield. Now, the charge is, that an undue advantage was gained, as the bonds were placed in the hands of innocent holders; that is the idea, and the charge is broadly, that "an undue advantage was gained," and that Mr. Follett testifies to positively. What undue advantage was gained in this case? What is the evidence? I call your attention to pages 638 and 639 on that point, the evidence of Isaac Newton, attorney for the road:

"Q. Did you know what subsequently was done with them? A. Yes, sir." (That is the bonds.)

And I call the attention of the Senate, particularly, to this as bearing upon the knowledge of the judge that these bonds were printed in advance:

"Q. State? A. Previously to this, in the course of conversation with Mr. Hayes, I advised Mr. Hayes that it might be that we should desire to negotiate those bonds rapidly, if we desired to build the road; the village of Smithville was situated in one valley and Greene in another, and about five miles apart, and the trade of Smithville came to Greene, and there was a strong feeling between these towns, and our opposition in the fight seems to have come very largely from Greene, and we were afraid of being detained by injunctions, etc., and perhaps some question might arise by which we wished to negotiate the bonds at once; during the interval between that and the final decision of the case, I had two or three conversations with parties in the interest of bonding the town, and I proposed to them that if they could find some responsible person—I named a person—who would give ample bonds in the sum of $100,000 or $200,000, for fulfilling the work, to let the building of the road under a contract, issue them as soon as possible and transfer them on that contract, and if they were sold for money, the money could be tied up; but if under the contract, it could not be so; and they failed to get the contract, and they subsequently, without my knowing any thing about it, made a somewhat similar contract with my brother Warren Newton, and he gave security to fulfill the contract, and I suppose received the bonds upon that, and they remain under that. But his contract provided for a delay in

the work of the road, and for a release, provided any litigation or delay should arise out of it."

These bonds were placed in the hands of Warren Newton, the contractor, the contract expressly providing that he should be released from the contract if any litigation grew out of it, or any delay, and yet Follett swears positively that an undue advantage was gained by the issue of these bonds.

"Q. Your brother Warren kept those bonds in his hands several months waiting for some move on the other side to review the case? A. His contract provided that he should not be compelled to perform his contract in case any litigation was had; I advised him not to enter into a contract without it."

That any undue advantage gained is expressly disproved.

Senator BENEDICT — Does it appear that that was generally known?

Mr. E. H. PRINDLE—It does not, but the contract provided it; it was known to the parties, and how many others I know not; certainly nothing to the contrary was known; it could not be known because it was not true.

Senator BENEDICT—It was true the bonds had been negotiated?

Mr. E. H. PRINDLE—The bonds had been negotiated in that way; it was stated the bonds had been negotiated.

Senator BENEDICT—Was it stated they were negotiated with a special reservation that that negotiation should not prevail provided there was litigation?

Mr. E. H. PRINDLE—Mr. Follett testified they were in the hands of innocent holders.

Senator BENEDICT—That could be so, couldn't it?

Mr. E. H. PRINDLE—Not in a legal sense.

Senator BENEDICT—Not what it was in fact, but how it seems, I mean.

Mr. E. H. PRINDLE—Mr. Follett stated in his evidence in court that they had been transferred to innocent holders, and he swears an undue advantage had been gained; in point of fact they might have taken it up at any time and the contract made expressly provided, if there was any delay or litigation, that contract should be void; and this charge that it had been made known how the decision was to be made, or that these persons were to be appointed commissioners, is flatly contradicted by S. L. Rhodes, at pages 652 and 653; by H. G. Crozier, pages 630 and 631; and by Isaac S. Newton, at pages 643 and 644; and I will call your attention to the evidence of

Isaac S. Newton, attorney upon the other side; the attorney in favor of bonding that town.

"Q. Was Judge Prindle a party to the delay of appointing these commissioners until these bonds could be prepared for market? A. All I can say in regard to that is this; from the time I argued the case until the time that these bonds were brought to me on the night of the 24th I never saw nor passed a word with Judge Prindle, with a single exception; within two or three days before the 24th of December he came into my office, stating to me that Judge Mason had cited a case as having been decided in the seventh or eighth district, and said it had been published; he asked me if I had the book in which it was published; and my reply to him was, that I had forgotten that he said it was published, and incidentally he said, I will examine that case; I wish to see the decision; that is all that passed between us in regard to that; so far as I am concerned he never knew of the contracts, or the negotiation to print the bonds.

Q. You have no knowledge there was any understanding between the parties connected with the road and Judge Prindle that the bonds should be prepared for market about the time he filed his decision? A. No, sir; on the contrary they were under my directions; had nothing to do with Judge Prindle about it.

Examination continued by Mr. STANTON:

Q. You said in your cross-examination that you advised these bonds to be printed in advance? A. Yes, sir; blanks; the blanks to be printed.

Q. Was your object in giving that advice, to have as little delay as possible arise between the rendering of the decision and the negotiation of those bonds, and they should go into the hands of innocent holders? A. It was so that we could build the road.

Q. When did you first know who was to be appointed town commissioners in the case? A. I am not aware that I knew any thing of it until that evening; except as I have stated, until the evening after."

At page 644 he says:

"A. That argument is stated here as having been about the last of July; that would make it about the middle of August, and I should say within a couple of weeks another package; I should say before the first of September; they were sent to me by express from the city of New York; the bonds had lain in our hands perhaps three or four months while this decision lay back, and during that time this contract was made that I mentioned."

The charge is attempted to be made that Judge Prindle kept back

his decision, in order that these parties might have time to get these bonds printed and in readiness for negotiation. The facts are as shown, that the bonds had been printed, lain in the hands of these parties three months before any decision was made. Is there any truth in the charge that the decision was kept back in order to give time for the preparation of these bonds, when they were waiting with these bonds all in readiness three or four months for the decision? The decision was delayed so long that the bonds had to be altered, as shown at page 645:

"Q. Was that date altered from the printed date? A. Yes, sir; that was a part of the business I had that evening; I altered the date of the body of the bonds from the 1st of August to the 24th of December, and the date that the bonds would be due from the 1st of August to the 24th of December, thirty years ahead; making alterations in that way, and then supplying two coupons, so as to make them, in fact, bonds with sixty-one coupons."

Is there any evidence there that there was any conspiracy on the part of the respondent? He delayed the decision three or four months after they procured these bonds, without his knowledge, so long that they had to go to work and alter the bonds with a pen, at great trouble. Is that any evidence that he knew about the printing of these bonds in advance? Lewis S. Hayes expressly contradicts this, at pages 683, 684 and afterward; James Hazard, at pages 690 and 691; Charles P. Tarbell, 693 and 694; Mr. Bailey, at 695; and the respondent at 880. What bit of comfort does the counsel get out of this evidence? Upon what ground does he ask you to find this charge proven? He says that it is in evidence that Mr. Hayes, when Judge Prindle informed him before the decision was made that he was going to notify Mr. Follett that he was going to file the decision, asked him not to do it, or said something indicating a desire on his part that he would not notify Follett that the decision was to be filed, and he said the respondent said in substance, that he should go and notify Mr. Follett of the decision and there should be no sharp practice in the case so far as he was concerned; "so far as I am concerned," I think is the language, and from that expression and that alone, the counsel draws the inference that he must have known that there had been sharp practice before that; that the bonds had been prepared beforehand; when it is positively proven that such was not the case, by all the parties who were interested who knew any thing about it; it probably occurred to the mind of the respondent that they might want some sharp practice on their part when any suggestion of a desire was made on their part that the opposite counsel should not be

informed, and that was the reason why he made use of that expression and the only reason, and the only interpretation, in view of the facts, that can be put upon his language; he tells him upon the first intimation of a desire to keep any thing back, "No, sir; there shall be no sharp practice on my part in this matter;" and I say that the evidence shows that the respondent was very careful to do his duty fairly and fully in this case, and see to it that so far as he was concerned, or so far as he knew, no wrong should occur. And suppose these commissioners were suggested to the county judge, and he appointed them in consequence of such suggestion; suppose it to be true; was there any thing wrong in that fact? It appears in evidence that the contestants had a petition asking the appointment of a particular man; commissioner from East Smithville; they suggested the man, on their part, that they desired to have appointed; is it any thing wrong for the parties in favor of bonding this town to suggest the names of the men whom they wanted as commissioners? Why, it has always been and it should be done. The judge did not know the men of the town of Smithfield particularly; it is in a remote corner of the county. They suggest the proper men to be appointed, perhaps; and they were appointed. Is there any complaint that he appointed improper men? Has there been a particle of evidence in this case showing that the men that he appointed were improper men? That was the question for him to determine. He appointed proper men, and if he appointed proper men, no matter who suggested they should be appointed, or who presented petitions for their appointments; there was nothing wrong in the presenting of the petition or the names.

Senator MURPHY—What was the decision?

Mr. E. H. PRINDLE—The decision was in favor of bonding the town.

Senator MURPHY—Is it necessary the commissioners should be appointed simultaneously with the decision.

Mr. E. H. PRINDLE—I am not positive in regard to that law, whether it was absolutely necessary or not.

Senator MURPHY—Was there any application made on the part of Mr. Follett, between 12 o'clock and 2, to have the appointment of the commissioners delayed?

Mr. E. H. PRINDLE—None at all.

Mr. STANTON—The evidence shows the commissioners were appointed at the time the judgment was filed in the morning.

Mr. E. H. PRINDLE—There was no attempt to have any different commissioners appointed except this claim on the part of the prose-

cution, that the judge had promised to appoint a man from East Smithville; the people in that portion of the town being opposed to the bonding, it is claimed. Mr. Welch testifies that the respondent told him that he might inform Mr. Follett, the attorney for the contestants, that he would appoint one man from East Smithville. Mr. Birdsell, who was present at that conversation, don't recollet any such thing. Welch testifies, I believe, that he subsequently told Mr. Follett that fact. The respondent testifies that he did tell him that he would appoint a man from East Smithville, or some thing to that effect; I may be mistaken—that he would appoint a man from East Smithville, provided they could find a man there that was in favor of bonding the town—there was that provision in it which Welch does not recollect, and a petition was presented to the judge for the appointment of a man from East Smithville, but it turned out that that man was one who owned but little or no property; an unfit man for the place; that he was bitter and violent in opposition to the bonding of the town, and that it was altogether probable that, if he was appointed, he would defeat the very bonding of the town by his factious conduct as commissioner; and the respondent testifies that he explained that to Mr. Follett on the morning the decision was filed, and before the decision was filed; he told him the three men he was going to appoint before he made the appointment, and I will read from page 679 the testimony of Mr. Hayes on this point of knowledge:

"Q. Did you know or have any intimation as what the decision was to be in advance of the time it was to be made? A. None whatever I took the chances; Mr. Crozier and myself did; I had been director of the Greene railroad; had been familar with this whole matter, and the decision of Judge Prindle in regard to the bonding of the town of Greene; and knew that it involved the same decision; my judgment was that he would not decide one case one way and another another; and I saw fit to take the chances."

I would ask senators what motive the respondent could possibly have had for making known his decision to these men beforehand? What evidence is there that he could have had any motive whatever for making known his decision in advance? We prove positively, by all of these parties, that he did not make known his decision in advance, or the appointment of these commissioners, as counsel would have this Senate infer. Now I will call the attention of the Senate to the eighth charge, and that is, a neglect to decide cases at a proper time; neglect in decisions. I call the attention of the Senate to page 641, to the testimony of Mr. Newton, who was, I

believe, the only witness giving any evidence upon this branch of the case; this question was asked him: "Was there any delay in which you think the counsel in any of the cases had a right to find fault with the judge, that was attributable to the judge? A. Not unless I could, too; I don't know of any case of that kind." Mr. Newton gave some evidence in regard to particular cases in which the decision had been delayed, but he don't know whether the briefs were in upon both sides; he don't know whether there was any fault attributable to the judge, and he says here that he knows of no case in which any of the parties had a right to find fault, unless *he* could find fault; and he don't know of any case of that kind; again:

"Q. I wish you to take into consideration, in answering that question, the surrounding circumstances, whether the cases had been fully submitted by both sides, and briefs submitted, and the attorneys of both sides awaiting the decision, all things considered, whether there was unreasonable delay which would amount to a culpable neglect on the part of the judge, in your opinion? A. I don't know that I could answer that question; I never complained of any delay; I was not in a very good condition to complain of delay, for I was very much in the habit of delaying on my briefs myself; some of those little cases involve just as strong questions as any case we get anywhere else, and sometimes the preparation of a brief is equal to a brief at general term; a pressure of trials made me delay; I cannot tell what there was of pressure on the part of the judge; I have no doubt he could have taken up those cases and decided them.

Q. We all know very well that delays are often produced for the accommodation of counsel; I want to ascertain whether this delay was on the part of the judge entirely, or whether it was in part owing to counsel, and for their accommodation? A. I should say, sir, both; I should presume in some cases I have mentioned I know some of them have been fully argued and submitted, and that in others my impression would be, perhaps, upon the argument; we would argue the cause, for instance, and so we would submit the brief, and the matter get delayed; I know in one, two or three cases mentioned I had, perhaps, important legal propositions, but not, perhaps, involving much money."

It is unnecessary to spend much time on this part of the case, for I do not apprehend the Senate will consider the charge as proved or the evidence as very material. I will call the attention of the Senate to the fact that the proof in this case shows that the counsel

himself, who is complaining of this matter, in a case where he was referee neglected to decide a cause after it was fully submitted between two and three years; a single case where he was referee in the Supreme Court. It is so easy to see a mote in the eye of our neighbor when there is a beam in our own, undiscovered.

I will next call the attention of the Senate to the sixth charge. The gist of the charge is that the respondent "corruptly and unlawfully entered into an agreement with John Murphy, son of said deceased, by which he, the said surrogate, agreed to use his influence to induce one Dr. Thomas Dwight, executor, named in said last will and testament, to resign his said trust in order that said John Murphy might be appointed administrator of said estate with the will annexed, and that, in pursuance of said contract, said surrogate procured and induced said Dr. Thomas Dwight to resign his said trust and for and on account of said services the said surrogate corruptly received, in or about the month of March, 1868, from said John Murphy, the sum of $50; and that for his services in and about the proof of said will, and the granting of letters of administration with the will annexed, to said John Murphy, upon said estate, he, the said surrogate, at the same time and place, corruptly and unlawfully demanded, received and extorted from said John Murphy, administrator as aforesaid, the sum of $80, said surrogate being legally entitled to a small part only, if to any part of the same, as his lawful disbursements on account of said matter."

I call your attention to page 105 to show that Mr. Murphy contradicts himself in his own testimony:

"A. Well, I don't know just exactly what, after that, I did say to him; I think I asked him after that if there was any chance to remove an executor, and he said no, there was no chance; so I believe I didn't say any more about it at that time; I believe I left him and went home; I came back again and saw him, and was talking to him once after that, and I asked him if he thought there could be any way got for removing an executor; he said no; no chance at all; then I asked him if he would have a talk with Dr. Dwight, and get him to resign his office and appoint it over to me; he said he would; I told him that I would pay him for his trouble if he would do so.

Q. Was Dr. Dwight the executor of your father's will? A. Yes, sir, he was.

Q. Go on. A. There was nothing further said until the day the will was put to proof.

Now, bear in mind that he gives two conversations; all that was said, and swears expressly there was nothing further said, until the day the will was proved. Now, I call your attention to his evidence on page 385; at the top of the page he says:

"A. I told him if he would talk with Dr. Dwight and get him to resign the office, I would give him $50, and if Dr. Dwight wouldn't resign his office, I wouldn't give him nothing.

Q. Where was that talk? A. At his office.

Q. About how long before the proof of the will? A. Oh, I guess it might have been a couple of weeks; I couldn't be certain; I didn't pay much attention to that to tell just how long before.

Q. Who was present at the time that talk was had, any body besides you and Judge Prindle? A. Yes, sir; Mr. Ray was in there; there were several others in there on business."

There is a flat contradiction in the testimony of Murphy himself; an impeachment; he tells expressly of two interviews he had with Judge Prindle before that, the only interviews he had; tells the conversation, and all the conversation; yet, after this time, gives another conversation, which is a flat contradiction of his previous evidence. Now, the charge is that he entered into an agreement with Murphy and induced Dr. Dwight to resign, and received $50 for his services. Did he induce Dr. Dwight to resign? I call the attention of the Senate to pages 741 and 742. This is the evidence of Dr. Dwight:

"Q. Previous to that time had you had any conversation with Judge Prindle in reference to your executorship of this will? A. Not a word.

Q. Who did you see when you went to make the application for proof of the will? A. Judge Prindle and Mr. Ray.

Q. Any body else? A. I don't know who else might have been there.

Q. Who did you first speak to in reference to the transaction of that business? A. Geo. W. Ray.

Q. He was the first man? A. I couldn't swear positively whether I spoke to him first or whether I spoke in general terms of it before him and the judge, that I came to get papers for the proof of the will of Murphy; I cannot say that I spoke to one or the other on the first start; I think, more than otherwise, that I spoke in general language before them both."

On the opposite page (741) he says:

"Q. When was the first talk you had with Judge Prindle in reference to that matter? A. The day the will was proved.

Q. What time of the day? A. The latter part of the day.

Q. After the will was proved? A. No, sir.

Q. Before? A. Yes; before the will was proved he came in the back room where I was sitting.

Q. Who came in? A. Judge Prindle, and he asked me if I knew what charges were out against me in regard to this will, and I said I supposed I did.

Q. What further was said? A. At that time there was nothing further said; only called witnesses to prove the will.

Q. Was there any thing said as to whether or not you were willing to renounce? A. No, sir.

Q. Who was present at that time? A. Geo. W. Ray and Horace G. Prindle."

So that at the time the will was proved or at any other time, Judge Prindle never said a word to Dr. Dwight to induce him to resign or renounce his executorship. The charge in that respect is totally false; he did not induce him to resign.

Now, you will recollect very well that Mr. Murphy denied positively, in the first instance upon the stand, that he had ever made any charges against Dr. Dwight, the executor; that he had ever accused him to any person of putting his name in the will as executor without the authority of his father; denied it repeatedly; you recollect his appearance upon the stand during that time. Do you believe, in view of the evidence that the other witnesses gave, that this witness never did make any such charge? I call your attention to the further evidence of Mr. Murphy upon that point, page 386:

"Q. Have you told all that took place in regard to this matter? A. All that I can remember now.

Q. You have told all that you can remember now that took place? A. All I can remember just now.

Q. During the whole negotiation that took place in the office there? A. Yes, sir.

Q. Then you don't remember any charges that you made against Dr. Dwight? A. No, sir.

Q. Do you mean to swear to that? A. I can't remember of no charges that I made now.

Q. Why, the charges that you made then?

Mr. STANTON — Perhaps the counsel had better explain what he means.

The WITNESS — I don't understand what you are getting at.

By Mr. PRINDLE:

Q. I understand you to swear that you do not recollect any thing else that took place during these negotiations than what you have stated? A. I don't recollect nothing else concerning this will.

Q. Concerning the will? A. Yes, sir.

Q. Did you make any charges of wrong conduct on the part of Dr. Dwight? A. No, sir; I don't remember that I did.

Q. Did you charge that Dr. Dwight had inserted his name there after the will was drawn, and that your father did not know any thing about it? No, sir; I didn't.

Q. Did you make any such statement? A. No, sir; I don't remember making any such statement.

Q. Saying nothing to that effect? A. I can't remember saying any thing to that effect.

Q. Will you swear that you did not? A. Well, I think I did say something concerning what the witnesses said."

Was that witness candid and honest; a man that you can depend upon for a truthful recital of facts in a case like that?

"Q. What did you say? A. Well, I'll tell you as near as I can; that the witnesses said that the will he had left with Mr. Franklin; that I would find the will with Mr. Franklin; when I called on him Mr. Franklin told me that Dr. Dwight had the will; I think that was all I said about that.

Q. You didn't think of that when I asked you before? A. No; I didn't think of that.

Q. You thought of that since? A. Yes, sir.

Q. Did you claim that your father told you that you should be appointed the executor in the will? A. No, sir; I didn't.

Q. Will you swear positively to that? A. Yes, sir.

Q. Now, sir, didn't you distinctly charge that Dr. Dwight, contrary to your father's wishes and intention, had forged his name in that will as executor? A. I don't think that I did.

Q. Do you swear that you did not? A. No; but I don't think I did."

There is evidence of the same kind where he partially denies and partially does not deny that he made these charges. I call your attention to page 757, evidence of Mr. Ray:

"Q. Who applied to prove the will of Edward Murphy? A. Dr. Dwight.

Q. State what you did? A. Dr. Dwight came there to the office and he knew I was an attorney and practicing as such, because I was

acquainted with him and his cousins and relatives very well, he told me that he had the will that he wanted proved; I drew the petitions and citations and he served them; within two or three days after that John Murphy came to the office.

Mr. E. H. PRINDLE here handed the witness several papers.

WITNESS — I would here say that I hold in my hand the final account of the executors of the will of Anna W. Barrows; there is the petition for the proof of the will and there is the petition for the final settlement.

Mr. E. H. PRINDLE — I would like to have these considered in evidence and marked; I do not care to have them in the record to lumber it up.

The same was here marked, for indentification, C. R. D.

Q. All in your handwriting? A. Yes, I think they are; if there is any thing that is not, I think it was done by some clerk in the office under my direction; there might have been some student there whom I told how; I think not, however.

Q. Go on and state now in regard to Mr. Murphy's coming down? A. He came to the office, and my memory is that Judge Prindle, at that time, was not in; Mr. Murphy came there and was in a very excited state, and wanted to see the surrogate; wanted to know where he was; I can't tell you what I told him, but I sent him off somewhere after the surrogate; he came back in a short time with the surrogate, and Judge Prindle asked me if I had the will; I told him that I had; I got the will and produced it; Judge Prindle took it and looked it over in my presence with Mr. Murphy, and Mr. Murphy told Judge Prindle that he was the executor who should have been named in the will; that his father promised it, and that his father told the witness that he was the executor, and that the witness would swear to it, and if Dr. Dwight's name was in there as executor that Dr. Dwight had forged his name in there himself; Judge Prindle looked over the will and he found in the will that the place where the executor's name — I should say that he further charged that the amount of a certain legacy (I think to Margaret Murphy) was put in differently from what his father desired and asked it to be put in. Judge Prindle looked through the will and he found that there was something appearing on the face of the will that might substantiate it, and he told Murphy that he saw that the amount of the legacy was put in with a different ink, and a different pen, and at a different time, and that the name of the executor was that same way, and Mr. Murphy said that he would fight the will if it took the last dollar he had; that Dr. Dwight never should administer that estate; or

have any thing to do with it; he said that he should get a lawyer to do it; he wanted to take the will and show it to a lawyer, I let him take the will, and he went out somewhere to show it to a lawyer, and came back, and I suggested to him that Dr. Dwight was not a man who would do any thing of that kind; that his reputation was spotless, but he would listen to nothing, and said he should fight the will; I immediately sat down and wrote a letter to Dr. Dwight, informing him of the facts, and Dr. Dwight came down and talked with me in regard to the matter; within a day or two I was going to Otselic, and I saw Dr. Dwight in regard to the matter, and I stopped and talked with Mr. Berry, who was one of the witnesses, and he informed me there was nothing of the kind about it; after I got back home Mr. Murphy came there again, and Judge Prindle suggested to him that probably Dr. Dwight did not care any thing about administering the estate, and that he might, perhaps, negotiate with Dr. Dwight, and Dr. Dwight would renounce and let the whole thing go, and Judge Prindle said to Mr. Murphy, 'You must get a lawyer to attend to the matter for you,'" etc.; contradicting Murphy; showing that he did make these charges that he swears he did *not* make, and afterward could not remember whether he made them or not. There is much more of this evidence of Mr. Ray upon that point, on page 761, and at other points. Dr. Dwight, at page 741, says:

"A. Let me state it if you will; I don't say that I learned that he wanted to get the business in his hands; I learned this fact, that he had made intimations, innuendoes and expressions, stating that I had foisted my name in the will as executor.

Q. I don't ask that; from whom did you first learn the fact that he desired to take your place? A. It came in among the expressions in regard to my having foisted my name in the will as executor.

Q. State who you learned it from? A. I can't say positively; I should say it was from Alfred Daniels, as near as my memory serves me; that John wanted it changed and to handle it himself.

Q. When was the first talk you had with Judge Prindle in reference to that matter? A. The day the will was proved.

Q. What time of the day? A. The latter part of the day.

Q. After the will was proved? A. No, sir.

Q. Before? A. Yes; before the will was proved he came in the back room where I was sitting.

Q. Who came in? A. Judge Prindle, and he asked me if I knew what charges were out against him in regard to this will, and I said I suppose I did."

That evidence I have already read.

Senator BENEDICT — That part reading "charges against him," should be "charges against me."

Mr. E. H. PRINDLE — Yes; the word "him" is evidently a mistake. The charge is that the respondent received from him $75, and also $50 in addition, that he paid to Judge Prindle.

Senator BENEDICT — Received it from whom?

Mr. E. H. PRINDLE — That the respondent received it from Mr. Murphy. Here is the receipt that was given by Mr. Ray for the $75:

"$75.25. Preston, N. Y., April 1, 1868. Received of John Murphy, seventy-five dollars and twenty-five cents, in full of all accounts of Edward Murphy, deceased, the same including all accounts of whatever nature, pertaining to the deceased or his business. Thomas Dwight."

That is the receipt the doctor gave, however. Here is the other.

"Received, of John Murphy, administrator, with the will annexed, of the estate of Edward Murphy, deceased, seventy-five dollars counsel fees, costs and disbursements in the matters of proving said last will and testament, and granting letters thereon, March 31, 1868. G. W. Ray."

Murphy does not pretend that he paid the $75 to the respondent, but testifies that he paid it to Ray himself. There is no pretense that the respondent received the $75. "Q. You paid the money to Ray? A. I paid the money to Mr. Ray, sir." Mr. Murphy had made an affidavit that was published in the papers and circulated during the campaign, which may be found at page 388:

STATE OF NEW YORK, }
CHENANGO COUNTY, } *ss:*

John Murphy, of the town of McDonough, being duly sworn, deposes and says: That he is the executor of the estate of Edward Murphy, deceased; that on February 5, 1868, he went before Judge Prindle to have the said Edward Murphy's will proved; and that said Prindle charged him $75, which he paid and left. Said judge then followed him out into the street, and told him that his clerk made a mistake and he wanted $5 more, which he paid, supposing it to be surrogate's fees.

JOHN MURPHY.

Subscribed and sworn to before me, }

EDWIN KELSEY, *Justice of the Peace.*"

He says "he was the executor"; that was not true; and "he went to have the will proved"; that was not true; he didn't come before the judge to have the will proved; and "that the said Prindle charged him $75, which he paid and left"; that was not true. Prindle did not charge him any $75; he didn't pay him any $75; Ray charged him $75, which he paid to him; then "said judge followed him out into the street and told him that his clerk made a mistake and he wanted $5 more, which he paid, supposing it to be surrogate's fees." The evidence of Ray shows that probably he didn't charge any thing for a $5 stamp, and that he did pay him the $5; but in this case Murphy swore that the judge told him it was for a stamp. That his clerk, as the counsel says, had made a mistake in regard to the stamps. Here in this affidavit he swears "he paid him the $5 supposing it was surrogate's fees." There is a flat contradiction in Murphy's evidence, swearing in the affidavit that he supposed it was surrogate's fees; swearing here that the respondent told him that his clerk had made a mistake in regard to the stamp; and I may as well notice here that the counsel here has a great deal to say about what this witness testifies to; that the respondent told him that Ray was his clerk. How came that word to be put in that affidavit with all these other falsehoods? Why, there was an anxiety on the part of the opposers of Judge Prindle, last fall, to make it appear that Ray was his clerk, and the person who drew up that affidavit put the word into the affidavit in order to make it appear that Judge Prindle had admitted that Ray was his clerk, and they procured Murphy to come here and swear that he told him his *clerk* had made a mistake. Does any senator believe that Murphy can recollect now the exact language that the respondent used to him so long ago, and that he told him his *clerk* had made a mistake? Now, Mr. Murphy claims that in addition to this $75 that he paid to Mr. Ray, he paid Judge Prindle $50 for inducing Dr. Dwight to renounce. Why didn't he mention it in that affidavit that he made upon that occasion, if he had paid him $50 in addition thereto? Does it look reasonable that when he is making an affidavit, stating the amount that he paid to the respondent, to prejudice the people against the respondent in that canvass, he would leave out the $50 that he actually did pay, as he claims now, to Judge Prindle, and put in the $75 that he didn't pay to him, but that he paid to Mr. Ray? Will you believe him when he comes here and testifies that he paid $50 to Judge Prindle in addition to the $75, when he never mentioned it in the affidavit that he made last fall?

What is the reason given by the witness, for not mentioning the $50 that he paid, in that affidavit? On page 419 the question is put:

"Q. Why didn't you say something in that affidavit about paying the judge this other $50? A. Because I had no receipt of it, and I thought it was none of my business to say any thing about it."

Now, he says he didn't put the $50 in his affidavit, because he had no receipt of it and he didn't think it was his business to say any thing about it. Why did he put in the $5 the judge collected of him afterward, as he says; why did he put in the affidavit the $5 that he had no receipt for, and leave out the $50? His reason is false, evidently, otherwise he would not have said any thing about the $50. He gets up the miserable excuse that he didn't say any thing about the $50 in the affidavit *because he had no receipt for it.*

"Q. You remembered it when you made this affidavit? A. Yes, sir.

Q. But didn't put it in? A. No, sir; I didn't put nothing at all in only just what I had receipts of."

But he did put in the $5 that he had no receipt of.

"Q. Did you swear you paid it to Mr. Ray? A. I swore that I had paid the money to Mr. Ray.

Q. This is the language of the affidavit, 'and that said Prindle charged him $75, which he paid and left?' A. I see that's the way it is in the affidavit, but I didn't mean to have it so.

Q. Did Prindle charge you $75? A. No, sir; I didn't pay Mr. Prindle $75; I paid Mr. Ray.

Q. Did he charge you $75? A. No, sir, he didn't.

Q. Did you state, in the presence of Charles W. Scott, at McDonough, or East Pharsalia, or at Preston, that you never paid Mr. Prindle any money at all? A. No, sir; I did not.

Q. You swear positively to that? A. I swear positively to that.

Q. Did you state that at either of those places while Silas R. Berry was present? A. No, sir; I did not; I didn't make no such statement, that I didn't pay Mr. Prindle no money, because I told them both I did.

Q. Or any thing to that effect? A. No, sir; I did not.

Q. Did you state, in their presence, at either of those places, that you paid only $75? A. No, sir, I did not; I stated that I paid the full amount.

Q. What full amount did you state you paid? A. It was, I think, $120, I think, I told them I paid in all.

Q. You did have conversation with them? A. Yes, sir.

Q. And you told them that you paid $120 in all? A. Yes, sir.

Q. And that you swear to positively? A. Yes, sir; I think it was $120; I couldn't be certain now; but it was the full amount of money what I paid."

How came he to come here and swear that he paid $50, in addition to the $75 that he put into the affidavit? What induced him to do it? Do you believe what he swore to when he made that affidavit, swearing that he paid $75 to Judge Prindle, when in fact he did pay it to Ray, leaving out the fact that he paid $50 in addition to the respondent? Page 442, again:

"Q. When did you first state to any one, as you now recollect, this transaction of the payment of $50 to Judge Prindle for getting Dr. Dwight to renounce; who is the first man you stated that to? A. I think it was Mr. Follett."

And so on; it does not appear whether, before this, he had that conversation with Mr. Scott, in which he claims that he told him he paid $120, in all; but I think it must have been before that; but some time during the fall he told Mr. Follett that he paid this $50, in addition to the amount that he had paid to Mr. Ray; a little remarkable that this man, who has made these remarkable affidavits in this case, and has taken a remarkable interest in this case, as it is shown, should be the only man who could extract this important fact from the lips of this man; a little remarkable. Why, I can see readily enough how it was; Follett found that he had paid Dr. Dwight a certain amount; first $50 for his services in that matter — renouncing — gave off his large commissions for the sum of $50; and a base and cowardly attempt has been made to fasten the payment of that $50 upon the respondent; and this witness has been the base tool in the hands of base men to come here and swear to such a transaction, when it is as false as the Koran, and all the evidence in the case, and the circumstances, show that it is false. Mr. Follett is the man, and the only man, who had the key to unlock the heart of this witness and take out this important fact, that he had concealed from all others, as he said, because *he had no receipt.* I call your attention to the evidence of Mr. Scott, page 707:

"Q. Will you go on and state when and where, and what that conversation was? A. In the first place I met Mr. Humphrey at a meeting at McDonough at which Judge Prindle spoke, and was talking about what Mr. Murphy had sworn to in relation to his father's estate, or the settlement of the estate, and Mr. Murphy commenced saying he had sworn to no such thing; I took out of my pocket a pamphlet entitled the "Mill of Extortion," and com-

menced reading Murphy's affidavit from the pamphlet; Mr. Murphy kept denying that he had sworn to any such thing, and some one in the crowd suggested that we had got some affidavit that had been garbled or changed; I held up the pamphlet and said, "no, this is one of your own documents, the "Mill of Extortion,'" and Mr. Murphy said he couldn't help it, he never had sworn to any such thing; the next day, while returning from McDonough with my brother in law, we met Mr. Murphy in the road a little east of East Pharsalia; perhaps a quarter of a mile out of the village; he was riding one horse and leading another, going to East Pharsalia, I judged, and stopped and commenced talking about the affidavit; John said he was sorry; he didn't see how they came to publish such an affidavit; he said people would think he had been swearing to a lie; he said people in the vicinity knew the circumstances; I took out the pamphlet and read the affidavit, section by section, asking John if he had made any such affidavit; he said he had not; I read him the clause in which he swears that on February 5, 1868, he went before Judge Prindle to have said Edward Murphy's will proved; I asked him if that was not the very day on which his partner died; he said it was; he didn't see how they came to make any such affidavit; I read him the clause 'and the said Prindle charged him $75, which he paid and left; said judge then followed him out into the street and told him that his clerk made a mistake and he wanted $5 more, which he paid, supposing it to be surrogate's fees;' he said it was not so; he didn't pay Judge Prindle any $75; he paid Mr. Ray the money.

Q. Do you remember what amount? A. No, sir; I do not; said I, 'who done the business for you?' he said, 'Mr. Ray;' 'Well,' said I, 'is that all the money you paid?' said he, 'that is all except $50 I paid to go to Dr. Dwight for renouncing the executorship;' that is substantially the conversation that occurred."

The counsel said this conversation was had at a political meeting, but the truth was, the conversation was had the next morning after the political meeting, on the road a little way from East Pharsalia. On the opposite page he says:

"Q. That was the part that he stated was wrong? A. I read it to him, clause by clause, and he denied every clause in the affidavit.

Q. He denied every clause as you read them one after the other, did he? A. As I read them one after the other.

Q. He denied every one of them? A. He denied every clause.

Q. Well, he claimed that the substance of the whole affidavit was

true? A. No, sir; he didn't claim so; he claimed that the substance of it was wrong."

On the opposite page is the evidence of Silas R. Berry, who was present at the same conversation.

"Q. Were you present at that meeting at McDonough? A. I was.

Q. And at the subsequent interview? A. The next morning?

Q. Yes. A. Yes, sir.

Q. Will you go on and state in substance what was said at that interview? A. Well, my brother-in-law met him and he spoke of his affidavit, and then he takes this "Mill of Extortion" from his pocket and read the affidavit to him, and he denied it as he has so sworn.

Q. What was said about the payment of money? A. He asked him who he paid the money to; he asked him in the first place who done this business; he says 'George Ray;' says he, 'who did you pay the money to — George Ray or Judge Prindle; said he, 'I paid it to George Ray.'

Q. Did he state how much he paid? A. $75.

Q. Did he state whether that was all that he paid? A. Yes, sir, with the exception of $50 that he spoke of that was going to Dr. Dwight.

Cross-examination by Mr. STANTON:

Q. You are sure he said he paid no more than the $75 and $50? A. Yes, sir.

Q. He claimed he paid both those? A. He claimed that he paid only $75 in the surrogate's office.

Q. Who did he claim that he paid the $50 to? A. I don't remember as he stated who he paid it to; he said that he paid $50 to Dr. Dwight; I think that was the way he worded it, whether he paid it directly to him or some one else, I couldn't say.

Q. Now, sir, are you sure of the language that he used? A. Sure of the language that he used."

Now Murphy swears he paid the $50 in the back room of the office that day, and Dr. Dwight swears *he* was in there all the time and he saw no such money paid; he thinks he was there until nearly all the persons had left. The respondent expressly denies that he received it at all. I don't know but complaint will be made here — I have heard it made — that the surrogate ought not to have allowed the executor to renounce, but I say that this surrogate properly allowed the executor to renounce and John Murphy was

properly appointed an administrator, with a will annexed; it was in accordance with the wishes of all the heirs, and they were all of age; they were all present. You will find that evidence at page 391:

"Q. How many legatees were named in the will? A. Three of us.

Q. Were there any of them infants? A. No, sir; they were all of age, every one of them; they were from twenty-five to thirty years old.

Q. Did any of them live outside of the State? A. No, sir; they didn't.

By Mr. WOODIN:

Q. Was it the wish of all the legatees that Dr. Dwight should give up the administration? A. Yes, sir.

Q. Did the executor under that will have power to sell the real estate? A. I think not, sir.

Q. What was the amount of personal property; every thing except the land? A. Well, I guess it would amount to about seven or $8,000; that is, every thing, with the exception of the land, leaving the balance out."

And the estate amounted to some $30,000. Now, was there any thing here to be complained of, in this transaction? Has the evidence shown the transaction as it was? It appears Dr. Dwight went to Mr. Ray to get him to draw the papers for the proof of the will and to do the business; then this controversy arose between these legatees in the will and Dr. Dwight, and these charges were made; Mr. Ray went to see one of the witnesses; went to see Dr. Dwight; took some interest in the matter and did conduct some negotiations with Dr. Dwight, for the purpose of procuring him to renounce, and did induce, I suppose, Dr. Dwight to renounce the executorship on his receiving $50, pay for his services; all the heirs desired it to be done; the petition for the proof of the will had been drawn and copied and served; all the business for the proof of the will had been done; then it became necessary that a petition should be made for letters of administration with the will annexed, a proceeding for which there are no blanks; the writings had to be written out in full, in lengthy proceeding; the agreement between Dr. Dwight and the legatee was, that the legatee was to pay all the expenses of proving the will; pay all the expenses of the transaction; and Mr. Ray charged $75 for his services; the charges were reasonable and proper, and it was right in every respect that they should be paid.

I will next call the attention of the Senate to the ninth charge, which charges a refusal to answer and perform, etc., before the board of supervisors; and it is unnecessary for me to spend a great deal of time upon this charge. It is so obvious that there is nothing in it, that no fault ought to be found with the respondent in connection with it; he acted entirely under advice of counsel. (See the evidence of Mr. Glover, pages 729, 731 and 733.) I will not read that evidence. We say that the statute provides a way to test the right of the board to make the inquiry, and a copy of that statute may be found in Mr. Glover's opening, at pages 666 and 667. It provides as follows:

"Whenever any person, duly subpœnaed to appear and give evidence, shall neglect or refuse to appear or to produce such books and papers, according to the exigency of such subpœna, or so refuse to testify before such board or committee, or to answer any questions which a majority thereof shall decide to be proper and pertinent, he shall be deemed in contempt, and it shall be the duty of the chairman of the board, or of the committee, as the case may be, to report the facts to the county judge, or to the judge of the Supreme Court, or of the Superior Court, or of the Court of Common Pleas of any city of this State, who thereupon shall issue an attachment in the form usual in the court in which he shall be judge, directed to the sheriff of the county where such witness was required to appear and testify, commanding the said sheriff to attach such person, and forthwith bring him before the judge by whose order such attachment was issued.

"§ 5. On the return of the attachment and the production of the body of the defendant, the said judge shall have jurisdiction of the matter, and the person charged may purge himself of the contempt in the same way, and the same proceedings shall be had, and the same penalties may be imposed, and the same punishment inflicted, as in case of a witness subpœnaed to appear and to give evidence on the trial of a civil cause before a circuit or special term of the Supreme Court."

Now, the respondent claims, and his counsel claims, that the board of supervisors had no jurisdiction to inquire broadly into the official conduct of the county judge, and I hardly think any respectable lawyer can be found who will, really, claim that they have that power. This very statute provides that they are to go before the county judge in case any person is in contempt, and yet it is claimed, under this statute, the county judge himself may be brought before the

board of supervisors, and his official conduct generally inquired into; the proposition, upon its face, is a monstrous one; that supervisors, who have no special knowledge of judicial proceeding; no special knowledge of the law; no special knowledge of the duties of county judge, should sit in judgment upon his official acts. Certain members of the board of supervisors claim that they had a right to inquire into his official acts, and they passed a resolution to that effect, requiring him to appear before them and answer in regard to his official acts. Had not the respondent a right to test the question as to whether they had a right to inquire into his official acts or not? His counsel urged or expressed a desire, at least according to the evidence in this case, that the chairman of the board should take the steps pointed out by the statute; take the matter before Judge Boardman, or some other judge, and test the question; and, *in direct violation of the statute*, the board of supervisors passed a resolution, directing the chairman not to take any such steps.

Senator BENEDICT—Direct violation of what statute?

Mr. E. H. PRINDLE—This statute I have just read, "and it shall be the duty of the chairman of the board, or of the committee, as the case may be, to report the facts to the county judge," etc.

Senator TIEMANN—I see this order of the supervisors reads, "the county judge and surrogate;" it was not simply the *county judge* to appear before them, it was the county judge *and surrogate.*

Mr. E. H. PRINDLE—The county judge, I suppose, would necessarily embrace the surrogate, being the same man; he couldn't very well appear before them as surrogate without the county judge appearing there.

Senator TIEMANN—The county judge might not have been a county officer in the same sense that a surrogate is, and yet, the same person may fill the two offices as in this case.

Mr. E. H. PRINDLE—Then would it have been proper, in that case, for them to have applied to the county judge to punish the surrogate?

Senator TIEMANN—Yes.

Mr. E. H. PRINDLE—It seems to me that the respondent took precisely the course that he ought to have taken; he certainly ought to have followed the advice of his counsel, and I am happy to say he had as eminent counsel in that case as there is in the county of Chenango at least, and I may say, anywhere in that portion of our State, if not the State generally; he had eminent counsel, and he was advised not to answer certain questions; not to allow a judicial officer to be degraded by allowing a board of supervisors to inquire,

generally, into his official acts, and decide whether, in certain cases, he had charged certain parties illegal fees; decide the question as to whether it was the duty of the surrogate to draw these petitions for letters of administration, and for proofs of wills and other papers; decide these important questions with regard to the official duties of a judicial officer, and the highest judicial officer of the county. He acted properly in refusing to be degraded in his office by any such investigation; bear in mind, too, Mr. President and Senators, that this was a portion of a plan for the ruin of the respondent — a conspiracy against him — intended to involve him and his family in utter ruin and disgrace; a fishing investigation before the board of supervisors, to see what could be hatched up against him for the purpose of using it afterward. I might ask, here, what power the board of supervisors had to act, in case they had gone on with the investigation? What could they do? What could be the object of giving a board of supervisors power to investigate the official conduct of the county judge? The counsel attempts to make a distinction here, and say they had a right to investigate the discharge of his *administrative* duties, although, even he admits, I believe, that they had no right to investigate concerning the discharge of his judicial duty; but the statute makes no such distinction. If they had a right to investigate his conduct at all; if he was an officer coming within the provision of that statute, then they had a right to investigate *all* of his official acts, whether judicial or administrative, because the language of the statute is broad, embracing all his official acts. The truth is, the only reasonable construction that can be put upon that statute, that he is not an officer coming within the provision of the statute, whose official conduct they had a right to investigate. Otherwise, we are obliged to support the proposition, that a board of supervisors, without any qualifications for the work, have a right to investigate into the judicial duties of the highest officer of the county.

Now, the respondent did offer in that case to answer questions as to all matters which the board of supervisors could possibly have any right to inquire into; any thing in regard to fees where the county could be possibly interested; but, in regard to certain old transactions that had been settled by the board of supervisors with him in previous years, he declined to answer, under the advice of his counsel, and he was right in doing so, and I call the attention of the Senate to the case of *Supervisors of Onondaga* v. *Briggs*, 2 Denio, 26, to show that I am right in this position. This was a case where a district attorney had had his costs taxed and they had been audited by

the board of supervisors, and it was found, or it was supposed, that he had received several thousand dollars too much. I read at pages 38 and 39: "But suppose I am wrong, and the taxation is not conclusive. It is then good for nothing, and must be laid out of the case. The plaintiff cannot use it for one purpose while they reject it for another. How then does the case stand? The fees and expenses of the district attorney in criminal cases are a charge upon the county. The defendant presented his accounts, from time to time, to the board of supervisors, which board has power 'to examine, settle and allow' all accounts chargeable against the county, and to raise the money to defray the same; and the board, from time to time, examined, settled, allowed and paid the accounts. (1 R. S. 385, §§ 3, 4; id. 383, § 95; id. 367, § 4; 2 id. 753, § 12.) These acts conclude the plaintiffs from maintaining this action, upon two grounds: First, as adjudications of the matter made by a tribunal duly constituted for that purpose, and having ample authority to decide; and second, as voluntary payments, without fraud, and with a full knowledge of the facts. Either ground is a complete answer to an action to recover back the money. It is a monstrous proposition to say that all the accounts which have been audited and settled by boards of supervisors in this State can be re-opened and litigated at the pleasure of either party; and if one party can do it, the other can do it also. If the determination does not bind the party which makes it, clearly the other party cannot be bound; but, upon the plainest principles, it is conclusive upon both. And then, in addition, there was a voluntary payment of the money. There will never be an end of legal strife if an action will now lie to recover it back." That decides that the settlement of those accounts by the board of supervisors in previous years was conclusive upon the board of supervisors as well as upon the respondent. The board had no jurisdiction to go back to investigate those old accounts, to see if they couldn't fish up something to use against the respondent, and he very properly declined to answer questions in regard to those old transactions, not only upon the ground that they had no right to investigate his official conduct generally, but upon the ground that they had no right to go back of those settlements; and it is in evidence that those accounts were all settled.

Senator TIEMANN — While the board of supervisors might not re-open them, the question comes up whether no other body could re-open them or not?

Mr. E. H. PRINDLE — We have not come to that, in the discussion of this case, yet. I am discussing, now, this point — the ques-

tion of the jurisdiction of the board of supervisors to inquire into the official conduct of the county judge, and as to his being in contempt because he desired to have that question presented to a judge of the Supreme Court, and decided. If, in obedience to the wishes of the respondent and his counsel, the chairman of the board of supervisors had reported the facts to Judge Boardman or Balcom, or some other judge, and a decision had been made that the board had a right to inquire into those matters of the respondent, the respondent, in obedience to that decision, would have gone before that board and have had an examination — a full and fair investigation of all that was fair to be inquired into, as the decision might show; but they refused to do this, in violation of the statute, and asked to have this body remove the respondent because he wished to test this law, as he had a right to do. They desired to degrade him there before the board; go into a fishing examination in regard to all his duties as surrogate and as county judge. No specifications of the charges were made; no notice, before hand, as to what witnesses would be brought; no pleadings, none of the safeguards that should surround every man before he is put upon trial for any offense in any court or before anybody; I say that this investigation was commenced there for the purpose of ruining the respondent and they desired to do so without a charge being made; without a pleading; without any notification of what the charges were to be; without any notification of whom the witnesses were to be brought into the investigation, and the respondent, if he ever did any thing that was correct in his life, acted correctly and justly when he declined to allow that investigation to proceed. It will be remembered that nine members of the board of supervisors entered a written protest against the whole proceeding; a bare majority of them desired to go into this investigation, but it seems they and their counsel had no confidence in their position, because they declined to take the matter before a judge in accordance with the statute.

I come now to the tenth charge, that of allowing counsel fee on both sides, and I will refer a little to the opening of the counsel. I have not a reference to the opening and I will omit reading that portion of it, but I recollect, distinctly, that the counsel who opened this case came into court and said: "We charge that this respondent has allowed counsel fee in cases of the proving of wills to the unsuccessful party." *We* charge it. Coming here, with $150 or $30 even, of the money allowed in those cases in his pocket, and has the boldness and effrontery to say: "*We* charge that he has

allowed counsel fee to unsuccessful parties in the contest of wills." Now, what are the facts? There are just two cases proved where the respondent has allowed counsel fee to unsuccessful parties. One is the case of the proof of the will of Catherine Newton, where Robert A. Stanton was the only unsuccessful party appearing, and where he was allowed $150; and he states here, in his summing up, that he received the money, and says he paid all but $30 over to his relative, Mr. Packer, who was also a lawyer, but who did not appear as attorney in the case. Proof in this case will be found at page 649; this is the proof in regard to Mr. Stanton's receiving the money:

"Q. Do you know whether the money was paid to Stanton or not? A. Only by hearsay, sir.

Q. Didn't the executor pay it? A. I don't know that the executor ever told me; Mr. Stanton told me that he received the money; charged $30, and paid the rest of it to Packer.

Q. Packer is a relative of Stanton? A. Yes, sir; I think he did not say he paid the rest of it to Packer; he said Packer owed him, and indorsed it on his debt by an arrangement."

And there is the position in which this counsel places himself before this Senate, and before the country; receiving the avails of this order of money to an unsuccessful contestant; coming here with the money in his pocket, and has the brazen effrontery to ask for a removal of the respondent because he gave it to him. One hundred and fifty dollars was allowed to each counsel in the case by an arrangement; no objection was made to it, and it was understood that that was to be a settlement of the matter, and that there was to be no appeal, and the surrogate allowed it, and allowed Mr. Stanton to take his money, and now he asks to have him removed because he took it.

Mr. STANTON—How much did you take on the same order?

Mr. E. H. PRINDLE—I presume $150; I claim the order was right; I claim that it was just; I claim that it was proper; I don't ask to have the judge removed for it, and I never would do it; I would sooner lose my right arm.

One other case is proved; that is the case of the will of Holland Turner. In that case $15,000 was at stake, and it was a long and difficult case. Mr. Newton spent six days, he swears, in making his brief for the argument (page 650):

"Q. There were doubtful questions in the case, or questions in controversy? A. The question involved in the case was the sanity or ability to make a will; the will was made during his last sickness,

within a few days of his death; there was so much, that I spent six days in making my brief for my argument."

Those are the only cases in which counsel fees were allowed to the opposing party, and there was no objection in either case; it was, in fact, although perhaps not strictly in proof, by arrangement. Judge Kingsley was one of the counsel associated with myself on one side of that case. He is now dead, but I know that counsel told me that that was the understanding agreed upon by the counsel. Now, there is no fault found that the amount was unreasonable; that the charges were unreasonable in cases of that importance; $15,000 at stake, and the great length of time consumed in the case. There is no charge of that kind, but, counsel says, only fees should be allowed under the common pleas fee bill. How much would Mr. Newton have received for spending his six days in making his brief under the old common pleas fee bill. Just seventy-five cents, and that's all, as I recollect the law, and the other fees in proportion.

Senator D. P. WOOD—Mr. President: We did have an afternoon session in the rules, but I don't know but that it has been suspended, and I move the further consideration of the Prindle case be postponed until 4 o'clock.

The PRESIDENT submitted the question to the Senate upon the motion of Senator D. P. Wood, and it was decided in the affirmative.

The Senate re-assembled at 4 P. M.

Mr. E. H. PRINDLE—Mr. President and Senators: I must beg pardon for taking so much time, but the fact is I have been sick since the argument commenced, laboring with indigestion, and it is with difficulty that I collect or express my thoughts at all, and at times I have thought it almost necessary for me to sit down from sheer inability to proceed. At the adjournment of the Senate, I was speaking in relation to the tenth charge: the allowance of counsel fee on both sides in contested will cases. The evidence, in this case, shows it has been a common practice, I think, by the surrogates of this State in cases where no objection was raised. On page 652 of the case will be found the evidence of Mr. Newton upon this point.

"A. You mean within my own knowledge; I have known perhaps of four or five cases that now come within my recollection, in-

cluding these that have been mentioned on this trial; one or two besides the two or three mentioned on this trial; I have known cases in Chenango county."

The witness is speaking here of cases where allowances have been made on both sides.

"By Mr. MYGATT:

Q. Were there not some before Judge Clark? A. I don't remember of any before Judge Clark, and yet I may have been engaged in cases before him; I remember one or two instances, I think, in which you and I have been engaged before Judge Prindle, in which allowances have been made by general consent; if I should judge from a remark of one of the judges in Tucker's Reports, it has been a common thing in New York, where counsel assented; I think I can also speak from a decision which I have had, given by a judge of Westchester county, which is very full; I had it when Mr. Brown's case was up, and this case of Balcom's, that is mentioned; my attention has been called to those cases, and it is spoken of as having become common, where it is not objected to."

I am informed, by gentlemen from New York city, that a law was passed by the Legislature, in 1870, authorizing surrogates in such cases to make allowances to counsel on both sides; I have not examined to find the statute; I haven't had time, but I am informed by these gentlemen that such is the case; that allowances are made in the city of New York under that statute, which shows that the Legislature deemed it wise that a surrogate should have power to make allowances on both sides in a proper case. The decision in the case of *Devin* v. *Patchin* was quoted by counsel on the other side, and I wish to call attention to the allowances which were made in that case by the surrogate of the city of New York. I read from page 448 of 26 New York Reports, in the opinion of Judge Balcom: "He directed that the administrator to be appointed should pay out of the assets of the deceased, the gross sum of $500 to one of the counsel of Mary Grace Patchin, and the further gross sum of $150 to another of her counsel; and the gross sum of $500 to one of the counsel of Maria F. Devin, and the further gross sum of $500 to another of her counsel, besides $160.75 costs of the surrogate. These sums amount to $1,810.75, and the entire value of the personal estate of the deceased, as sworn to in the petition for letters of administration thereon, was only $1,500."

That was the order made by the surrogate of the city of New York when the law, in relation to making these allowances, stood precisely as it stands to-day, unless it is changed by the statute passed

in 1870. Judge Balcom, in making that decision, decided nothing new; the same thing had been decided before, and we find the surrogate of the city of New York, in a case where the personal estate only amounted to $1,500, making gross allowances, to counsel in the case, of $500 a piece, amounting in all to $1,810.75. Now, the highest sum that was awarded by the respondent in this case was only $250, in a lengthy and important case where the personal property involved amounted to $15,000. Why hasn't some one talked about impeaching or removing the surrogate of the city of New York for making such an allowance as that? Has anybody thought of it? Nobody, to my knowledge, has suggested that the surrogate of New York be interfered with because of that decision; nobody did suggest it. Yet because, without objection, in an appropriate case, the surrogate of the county of Chenango allowed a proper sum to the counsel in a case where the amount involved was $15,000, counsel are here urging the Senate to remove him from his office. Since the decision by Judge Balcom, the Court of Appeals have ordered the costs paid on both sides, where there was reasonable grounds for contest, and I cite the case of *Clapp* v. *Fullerton*, 34 N. Y. Rep. 190. This was the case of a contest of a will. Probably many members of the profession in the Senate will recollect the case where the person making the will in his old age, made a distinction between his two daughters; and it was claimed that there was undue influence used to induce him to make that distinction. This man recollected a remark made by his wife in her last sickness, in delirium, which led him in his old age to question the legitimacy of one of his daughters; a remark that he didn't consider of any importance when he was well and in his health, but he dwelt upon it in his last days. The will was contested upon that ground, but it was sustained. The court said in that case: "The allegation of undue influence rests mainly on influences to be deduced from facts which accrue only by the declarations of the testator; these are too vague and indeterminate in their nature to lead to a clear and satisfactory conclusion. The mind is involuntarily predisposed against the will by its apparent inequality and injustice; many of the circumstances surrounding the transaction cloud it with the gravest suspicion. The strong probability is, that the testator's false impression in regard to his wife received encouragement from those who should have been the first to disabuse him of his error. It appears from the testimony of his sister, Mrs. Wilson, that even after his death the proponent affected to credit the scandalous imputation; though it would seem from the nature of the case that the only absolute assurance she

could have either of her own or her sister's legitimacy was the purity of the mother, whose honor she seemed ready to impugn. We do not think the proof of undue influence rises to the degree of strength which would justify the rejection of the will. There was probable cause for contesting the validity of the instrument; and while we think the judgment should be affirmed, it should be with directions that the costs of both parties be paid from the estate.

Morgan, J., read an opinion for reversal. Wright, Smith, Peckham and Leonard, JJ., concurred in the opinion of Porter. Davis, Ch. J., concurred in the opinion of Morgan, J."

The Court of Appeals directed, in a proper case, that the costs of both parties be paid out of the estate; and are you going to remove the county judge of Chenango county because, in a proper case, without objection on the part of anybody, he followed the direction of the Court of Appeals? That is since the decision made by Justice Balcom in the case in the 26th of New York. I have said that it was, in fact, done by consent of counsel, though we are unable to prove, very clearly, that fact on account of the death of Judge Kingsley, one of the leading counsel in the case; but I will call the attention of the Senate to the evidence of the executor, Mr. Brown, as to his understanding about it:

"Q. Did you hear any thing about an arrangement among counsel for those amounts, and that it was the understanding that it was to rest there, to be settled? A. I heard that there was an arrangement, but as to knowing it, more than by hearing, I did not."

Q. Where did Mr. Brown, the executor of that will, hear of the arrangement? A. He was the one who employed Mr. Ray and Mr. Newton; Mr. Ufford was also one of the counsel.

Q. Did you hear talk among the lawyers? A. I think Mr. Ufford told me there was an arrangement."

So that, I think, it would be fair to presume in this case, what the fact was, that there was an arrangement; that there was no objection; it was acquiesced in and consented to by all the counsel in the case, and the case proceeded no further; there was no appeal taken. Mr. Ray's allowance was made, by the executor in this case, less than the allowance to most of the other lawyers. Mr. Brown, the executor, knowing the amount of work that Ray had done in that case; knowing that his services were equal to those of the other counsel employed, went personally to the surrogate, as the evidence shows, and asked him to raise the allowance to Mr. Ray; to do justice to Mr. Ray; and upon that application the order was made of $250 to Mr. Ray, the same as the other counsel had, or

some of the other counsel at least. The counsel, in his opening, said, in one case, the case of Holland Turner, "an order was entered ordering the payment of the sum of $1,100 out of the estate, to three or four different attorneys, and, among others, to this young man who was the surrogate's own clerk, and he was employed in the case at the suggestion of counsel who were desirous of success, and who wanted him in the case because of this relation which he held to the surrogate, and the influence he possessed by reason of it." What does the executor say in regard to this matter? Did he first employ Mr. Newton, and then did Mr. Newton suggest to him the employment of Mr. Ray on account of his influence with the surrogate? Was the counsel correct in his opening? At page 597, the executor, Mr. Brown, says:

"Q. You say you employed Mr. Ray? A. I did.

Q. How did you come to employ him? A. I couldn't say any particular reason that I know of, only he was in the office and I employed him first, before I knew there was to be any contest in regard to it; when I saw there was to be trouble about it I employed other counsel."

So that the statement of the counsel, in his opening, was entirely gratuitous; he flings in that other counsel suggested the employment of Mr. Ray, on account of his influence with the surrogate; on account of peculiar relations existing between them. It turns out to be the fact that he was the first counsel employed, and before it was supposed there would be any contest over the will whatever.

But I have already said more than enough, it seems to me, in regard to that charge, and I will call your attention now to the thirteenth charge, alleging a corrupt agreement in 1867, by which Ray was to perform the duties of clerk, and receive his pay by the patronage the surrogate would give him, thereby enabling the surrogate to retain the clerk's salary, and Mr. Ray to do a large business. I read from page 753 of the case, from the evidence of Mr. Ray:

"Did you ever have any agreement whatever with Judge Prindle, that you was to do any work for him; any of this clerical work? A. No, sir; I never had any agreement, or a word of conversation with him; there was not even an understanding that I was to do it; he told me I could stay in the office; that it would be a convenience to the parties to have an attorney there."

The evidence of the respondent upon this point may be found at page 879:

"Q. Was any arrangement made between him and you by which he was to do clerical work in the surrogate's office? A. No arrangement whatever of that kind; nothing said about it."

Now, this clerk hire allowed by resolution of the board of supervisors, was merely a mode of increasing the salary of the county judge and surrogate, and was always drawn by the respondent. This is no pretense that the clerk was to draw his pay under the resolution of the board of supervisors; it belonged to the respondent, and it made no sort of difference with the county of Chenango whether the surrogate employed Mr. Ray or any other person, or did the work himself; it didn't make a shadow of a difference with the county; so much was paid for having the work done; no matter how the respondent saw fit to get it done, whether he did it himself or employed different individuals to do it, or whether Mr. Ray did it. Now, I will ask, was any person harmed by being referred to Mr. Ray to do this business in the Surrogate's Court, if it was not properly surrogate's business, and he did the work well and charged no more than other lawyers? Manifestly not; manifestly. No person was harmed by it unless he charged for doing what was the surrogate's business to do, or what was the business of the surrogate to procure to be done; unless he charged for that, then there was no harm. Now, it is in evidence here, and it is uncontradicted, that Ray did not, as a rule, charge as much as other lawyers for his work. I call the attention of the Senate to his evidence at page 755, and I regard this evidence as somewhat important as bearing upon many of the questions in this case; showing how utterly groundless the great majority of the charges are and must be; showing that, instead of Mr. Ray's damaging or defrauding anybody, on account of what he did in the surrogate's office, he was a benefit to those who had estates to settle in that office, beyond all question and all dispute:

"Q. I want to ask you if you have ever looked over to see the amount of money that you got in a year there for surrogate's business? A. Yes, sir.

Q. State it? A. If you will give me that paper I had I can tell you.

Q. (Handing witness paper.) This newspaper? A. Yes, sir; I have figured it up for other years, and I have figured it up for this year specially, relating to the year 1871; this paper was published the 18th October, 1871; it was within a day or two of that time that

I figured this up; in the year 1871, thirty-two (32) wills were proved in the surrogate's office; I drew the papers in ten of those cases; in all the other cases it was done by other attorneys; for my services and the disbursements in proving these ten wills I charged $233; that included all disbursements; at that time only a part of it had been paid; most of it has been paid since; of this amount $69.30 was for disbursements; that is the amount I paid out, leaving $164.70 which I charged for my services in the ten cases, or $16.47 on an average in each case; some of those estates, for proving the will, I did not charge but $5, and some of them, perhaps, I charged $25; it depended upon the amount of work and counseling I did; the value of those estates was $45,000, as shown by the sworn petitions; letters of administration were issued upon thirty-three estates during that time, and I drew the papers in ten of those cases and charged $66 in all; the stamps and disbursements were $28.50, leaving $37.50 for my services, being an average of $3.75 in each case." Mr. Ray testifies to this; it is on record in the surrogate's office in the county of Chenango, and any person can go there and see that what he states is true. "Some of them I charged three times that, and there are one or two cases where I did not charge any thing, as the estate was very small and I thought that I could better afford to do it for nothing than to charge any thing; in the other twenty-three cases the papers were drawn by other attorneys; in regard to the final settlement I would say that, during that time, twenty-four estates were finally settled; I acted as the attorney in the final settlement of nine of them; other attorneys acted in the other cases; I charged for my services in the settlement of those estates $140, averaging $15.55 in each case; in two of the other fifteen cases the administrator was an attorney (Mr. Newton), and he drew his own papers and account, and he charged it in his commission; the attorneys charged in the final settlement of the other cases $489, being an average of $37.61 in each case." While other attorneys averaged $37.61 in each case, Mr. Ray charges averaged $15.55; and yet counsel have the boldness to claim that Ray has been robbing the estates of those for whom he has been engaged. "During that year up to that time I acted as special guardian in some cases, and received $35 for being special guardian; I received $6 for drawing guardian papers; I had received up to that time $373.20 for my services, and at this rate through the year it would amount to $466.50." And that was for the year 1871; the year in which he did the most business that he had ever done — the last year that he was there — except in one instance where he received this sum

in the contested will case which has been already spoken of. Now, what becomes of all these charges of corruption; of all these charges of fraud, in view of that uncontradicted evidence of Mr. Ray? If any person disbelieves it, he can go to the surrogate's office in the county of Chenango, and examine the official accountings there, which show all of these facts; and if Mr. Ray has testified falsely he can be indicted and punished for it. But he has not; he has testified to the truth, and no man can contradict him, or has dared to contradict him. This statement was published in the papers in Chenango county, and it was from the *Chenango Telegraph* that Mr. Ray refreshed his recollection upon it. If it had been false you may be sure that these industrious counsel would have hunted up the proof of its falsity, and had it here to meet him with; but it is true, and all these charges, these infamous charges of corruption on the part of Mr. Ray and the respondent, are simmered down to this little sum, Mr. Ray doing simply business enough, in the surrogate's office, to pay for his board, during the last year, when he received the most that he received in any year; and yet it is gravely charged that there was corruption there, and I don't know, although it is not expressly charged, but the counsel would claim that he divided up, with the county judge, these little sums that he got to eke out his subsistence, which would only pay his board at the Eagle Hotel, where he boarded. He could not have lived if he hadn't done a little business besides that which he did practicing in the Surrogate's Court. What becomes of the charges of the "Mill of Extortion?" Why, it turns out, in view of this uncontradicted evidence, that the respondent, instead of being slandered and abused because he had this young man in his office to transact business with dispatch and convenience, ought to be and is entitled to credit for having him there, because it was a wonderful convenience to the people who did business in the surrogate's office of Chenango county. There is no dispute about it; no mistake about it. Not only could they do their business with dispatch, convenience and accuracy, but were charged far less than they would have been charged if they had employed other attorneys, as the records, undisputed, in the surrogate's office show. It may be said that Judge Prindle should not have received money for him as he did in the Coates and Mitchell cases. To my mind, gentlemen of the Senate, the fact that the respondent sometimes received money for Mr. Ray, is strong proof that there was no corruption about it. If he had been guilty in regard to this matter; if he had entered into any corrupt agreement with Mr. Ray, he would have been

careful that none of this money was ever found touching his hands. I appeal to you, as men of experience and judgment, to know if such is not the case. But we find him, in some instances, actually collecting the money for Ray; in two or three cases taking it into his hands, and, as he and Ray swear, paying it to Ray afterward. It is not very strange that the surrogate should feel a little interested in the prosperity and welfare of Mr. Ray. You have seen Mr. Ray; he has been before you; you know his ability; you know what kind of a young man he is. He read law with me in the same office with the surrogate. He was poor. He had no property, and desired to live by his profession, and, no doubt, the surrogate desired to have him remain there in the office. Was it strange that he should occasionally lend his assistance to enable this young man to procure money enough to pay his board? While it harmed no person, a legitimate business, provided it was a legitimate business that Ray was doing, and I will come to that pretty soon. I ask you, if it is any thing strange that the surrogate, having a human heart, should occasionally interest himself enough to collect a little money, where he knew it was to aid Ray on; even assist him to business; any thing unnatural? Any thing strange? Have not other judges assisted young men sometimes, where they could do it without harming anybody, and are they to be removed from office for that? If so, this Senate will have to be pretty busy in making removals. There is no proof in this case that Mr. Ray ever charged too much for his services. If estates had been robbed, as has been claimed, why have not the counsel brought lawyers who are accustomed to doing business in the Surrogate's Courts before you, and proved that his charges were exorbitant and in excess of charges usually made by lawyers in like cases? The evidence is, that his charges were moderate. All the evidence in this case shows that his charges were moderate for the services rendered. Mr. Ray is a very accurate man to do business; he understood the business in the surrogate's office better than any other man in the county of Chenango — any other lawyer practicing there; he could do, probably, twice the business, in the same length of time, of that character, that any other lawyer in the county could do; he was a rapid and excellent penman; a man of quick perceptions; a man of excellent mind and judgment, as you know; and his services were worth, certainly, as much as the services of other lawyers. A great majority, perhaps, of these charges are based upon the idea that Mr. Ray was the clerk of the surrogate, and now I will come to the discussion of that branch of the case. He was not the statutory clerk. That is certain.

Mr. James G. Thompson was the statutory clerk and the clerk intended by the statute.

Senator BENEDICT — What charge are you on now?

Mr. E. H. PRINDLE — I am on the thirteenth charge. Of course, my remarks will apply to a great many charges; and right here, lest I might forget it, I want to notice the idea that the counsel conveyed, that this James G. Thompson was appointed statutory clerk in order that Mr. Ray might practice as an attorney and counselor at law, and not be the *statutory* clerk. Thompson was appointed in 1864, when the judge was elected for the first time; when Mr. Ray was in the army, and Ray was not admitted until 1867, and did not go into the office until 1866, and yet the counsel mixes up matters, and charges that James G. Thompson was appointed the statutory clerk, in order that Ray might act as an attorney and counselor at law in the surrogate's office. A bare statement of the case proves the falsity of the charge. Thompson was appointed because it was necessary, or proper, at least, that some person should be appointed, who, in the absence of the surrogate, could certify papers, and parties need not be compelled to make two journeys to the surrogate's office, in case the surrogate should be absent. That was the sole reason why Thompson was appointed; not with a view of drawing pay as a clerk or doing clerical work in the office, except to certify papers when it was necessary for the convenience of the public.

Senator BENEDICT — Have you got a reference to the act authorizing the appointment of the statutory clerk?

Mr. E. H. PRINDLE — It is in the Laws of 1863; I have not the particular reference to it here. We have just seen that there was no agreement that he should pay the clerk, at page 753. There was no agreement that Mr. Ray should be the clerk of the surrogate; he received no compensation as clerk of the surrogate; no bargain was made; no contract was made that he should be the clerk of the surrogate. All the evidence in this case, and bearing upon that point, shows that none of the relations existed that ordinarily exist between a clerk and the person who employs him. The surrogate had no right to call on him to do any work; there was no contract existing between them by which the surrogate had a right to call upon him to write one line or one folio, or do any other clerical business; that relation did not exist between them; he was under no obligation to do any thing of the kind, by any contract or otherwise, because Ray says there was not even an understanding that he was to do any of the clerical work. Whatever he did of clerical work in the surrogate's office, he did voluntarily. They had differ

ent persons in the office writing up the general records; the miscellaneous records; the hard work. Ray was an excellent penman, and some of the best of the recording he took hold, voluntarily, and did. That is his evidence. What kind of a clerk does the statute mean? I am not aware that it has ever been decided, but I will call your attention very briefly to the definition of clerk. First, Burrill's Law Dictionary, page 300:

"CLERK (L. Lat., *clericus;* L. Fr. *cler;* Span., *clerigo;* O. Eng., *clerick.*) In English ecclesiastical law, a priest or clergyman, a person in orders. When a person has been ordained a priest, he is, in the language of the law, a *clerk in orders.* 1st Blk. Com. 388. A person presented to a benefice or living is technically called a *clerk.* 2 Ibid., *et seq.*

In general law and practice, an officer of the court, who keeps its minutes, or records its proceedings, and has the custody of its records and seal, sometimes called a *prothonotary.* (q. v.) See Clerkship. *** This latter meaning of the term *clerk*, which is the prevalent one in modern law, though itself of considerable antiquity, seems to have entirely grown out of the primitive signification of *ecclesiastic.* Selden's Diss. ad Fletam, ch. 9, § 3. Among other branches of learning formerly exclusively confined to the clergy, were the (now ordinary) accomplishments of reading and writing. The ability *to read*, as we have seen, was at first so entirely peculiar to that body, that for a convict to be able to read (though never in holy orders), was, of itself, sufficient to entitle him to the privilege of clergy. 4 Blk. Com. 367. The mere certificate of the ordinary, or his deputy, *legit ul clericus* (he reads as a clerk, like one of the clergy), procured his immediate discharge from the temporal court. See Benefit of Clergy, Clericus. The still rarer accomplishment of *writing* was so far engrossed by the clergy as, in the course of time, to obtain for any person who *habitually used his pen*, in any employment, the appellation of "*a clerk*" (*clericus*); and this circumstance, in addition to the fact that judges of courts were formerly usually created out of the sacred orders, and that all the inferior offices were supplied by the lower clergy, sufficiently accounts for the appellation of the term *clerk* (once peculiar to the clergy) to those officers of courts whose principal function was *to use the pen* in recording the proceedings. Termes de la Leg.; 1 Bl. Com. 17; Selden's Diss. ad Fletam, ch. 9, § 3." That is the definition given by Burrill of the word "clerk." Certainly Mr. Ray was not a clerk within the definition given by Burrill's Law Dictionary. I have also

looked at Webster's definition of the word "clerk," which I may as well read:

"CLERK (14) (Synop., § 130) *u* (O. Fr. & Pr. *clerc*, educated, from Latin, *clericus*, A. S. *clerc*, *cleric*, *cleroc*, clerk, priest. See CLERGY.

1. A clergyman or ecclesiastic; an ordained minister. (*Obs.*)—*Ayliffe.*

2. An educated person; a scholar; a man of letters. (*Obs.*) 'Every one that could read--being accounted a *clerk*.'—*Blackstone.*

3. (*Eng.*) A parish officer, being a layman who leads in reading the responses of the Episcopal church service, and otherwise assists in it.—*Hook.*

And like unlettered *clerk* shall cry, Amen.—*Shak.*

4. One who is employed to keep records and accounts; a scribe; a penman; an accountant; as, the *clerk* of a court.

The *clerk* of the crown * * * withdrew the bill—*Strype.*

☞ In some cases *clerk* is synonymous with *secretary*. A clerk is always an officer subordinate to a higher officer, board, corporation or person; whereas a secretary may be either the subordinate or the head of an office or department.

5. An assistant in a shop or store, who sells goods, keeps accounts, etc.

☞ This word is generally pronounced in England as if it was spelt *clark*, but the pronunciation is very uncommon in the United States.

It would be hard bringing this case within either of the definitions of clerk given by Webster, or by the Law Dictionary; but it, perhaps, is not of much importance in this case. He was never such a clerk for the respondent as is mentioned in these works; he never was the clerk of the respondent as a law student; never served a clerkship with him, because the proof is expressly that he made his contract with me and served his clerkship with me, and not with the respondent. The evidence may be found at page 752, and there is no proof in this case that he assisted the respondent in his law business at all after he was admitted. Not a word of proof of that kind. Now was he a clerk within the meaning of that law?

Senator BENEDICT — Wasn't it stated that he was a student of Judge Prindle?

Mr. E. H. PRINDLE — No, sir; he was a student of mine.

Senator BENEDICT — He says there were several students besides him in the office.

Mr. E. H. PRINDLE — Not while he was studying law; it was after he was admitted, I think; I may be mistaken, but I think not. The evidence is at page 751, at the commencement of his evidence:

"Q. About what time did you commence reading law? A. I commenced the 27th of March, 1866.

Q. With whom? A. With Mr. E. H. Prindle, yourself.

Q. At what time were you admitted? A. It was after the 20th of November, 1867; between the 20th and 25th, I think.

Q. I had my office at the time you read law in the same office with the surrogate? A. Yes, sir; there were two rooms in the surrogate's office, and I always understood that your office was more particularly for your private business in one room and the surrogate's office in the other; that is, none of the records of the surrogate's office or any thing pertaining to the surrogate's office was ever kept in the back office; that was the office I was in mostly; that was the room I was in mostly.

Q. That was the room where you had your desk and occupied mostly? A. Yes, sir."

I will state the fact that Mr. Ray specifies particularly the conversation he had with me about coming into the office, and an arrangement that was made with me about coming to read law with me. The counsel says that he did some work for the surrogate about a week; he did for a short time; did some writing for the surrogate and the surrogate paid him for it, while he was there in my office reading law with me, and was my clerk, serving his clerkship, but that arrangement continued but a short time as he testifies. I say in the first place, his business was not that of a clerk, but of a lawyer; whatever else he did was incidental to it. Now, I call the attention of the Senate to his evidence at page 753, also at pages 788 and 789:

"*Cross-examination by* Mr. STANTON:

Q. Under what arrangement did you first commence as a student in the office of Judge Prindle? A. I met Elizur H. Prindle on the street and spoke to him about it; I afterward went into the office, and I think Judge Prindle sat at the table writing and Elizur Prindle stood by the stove; he had just got his overcoat on: it wasn't an overcoat, it was one of these cloaks; he was going away somewhere; I asked if he had concluded that I could come in; he said he had; he said I could come in and try it; he said he didn't think I would stay a great while; he asked me when I was coming, and I told him I was going over home a week, and then I should be back."

Senator BENEDICT — That was the time when he went into the surrogate's office as a student?

Mr. E. H. PRINDLE — In one sense it was, because he was a friend of mine, and went into the office to study law with me. It so happened that my office was in the same building with the surrogate's.

Senator D. P. WOOD — This conversation was with you?

Mr. E. H. PRINDLE — Yes, sir. I read at page 753, testimony of Mr. Ray:

"Q. Will you read it? A. I have a card here which I would like to read; my advertisement that I published in both of the papers (in one it reads Geo. W. Ray, and in the other G. W. Ray); reads like this (reading from Chenango *Telegraph*): 'Geo. W. Ray, attorney and counselor at law, Norwich, New York. Office over county clerk's office. Special attention given to proceedings in Surrogate's Court, proof of wills, settlement of estates,' etc. I also had at the entrance of the surrogate's office a large sign reading 'G. W. Ray, attorney and counselor at law,' or 'G. W. Ray, law office,' I think it reads —

By Senator D. P. WOOD:

Q. Give the date of the paper? A. October 18, 1871; I put that advertisement in the paper soon after I was admitted; at the same time I had several hundred of these cards, one of which I now produce, which reads the same as the advertisement; I think I had over a thousand.

By Mr. E. H. PRINDLE:

Q. What is the date of the notice, if it is dated? A. 19th February, '68.

By Mr. MYGATT:

Q. Does the paper indicate when the first publication was? A. It was soon after I was admitted, I know; Mr. Berry could tell as to that; I think he is here; that notice continued in the paper until I left the surrogate's office; I stopped doing any kind of business in the surrogate's office, or making it my office, in fact, as early as August, last year, when the first question was raised in regard to the matter; about the time of the political convention, I think, I stopped making that my office; that is, what business I had I did there, and some other little jobs, but did not go there any more than was necessary to show papers and things of that kind.

Q. When the question was raised as to your right to do business there, you ceased? A. Yes, sir; only to close up some matters I had on hand."

Now, here was Mr. Ray admitted to practice as an attorney in all the courts of this State, advertising in the newspapers as an attorney and counselor at law; advertising that his law office was over the county clerk's office; advertising to all the people that he would give special attention to proceedings in the Surrogate's Court, proof of wills, taking out letters of administration, appointment of guardians, etc. Right there at the entrance to his office, in the stairway, was a large sign, "G. W. Ray, Law Office," that no person who went into that office could well miss seeing, unless he were blind. Then he tells you that he had a thousand of these cards struck off. Every person that he did business for he placed this card in his hands in almost every instance; scattering hundreds of them throughout the country, as he could, of course, and as it was for his interest to advertise as a lawyer; he did not pretend to be a clerk; he did not want to be a clerk; he wanted to be a lawyer. He believed he had the ability to be a lawyer; he advertised himself as a lawyer; proclaimed it, in fact, to every person, in every way that he could, that he did business as a lawyer; and yet these parties pretend to say that they supposed he was the surrogate's clerk only, and doing the business of clerk to the surrogate. In almost every case where there was a final settlement, wherever they paid Ray any thing, they paid him for his services as a lawyer. They did so in their final accountings, and they did it in many instances. Now, was he a clerk? Could he be called a clerk? Or was he a lawyer? Why, I know that other lawyers — one particularly, who is now dead, once a partner of mine — used to do a large amount of surrogate's business; he was a very particular man — and in almost every instance he went into the surrogate's office and entered the orders, and did the clerical work himself. A lawyer, and a lawyer of reputation and large business, too, doing this clerical work in his own cases himself; yet they call Ray a clerk! Why, it was merely incidental to his general business. I know that some evidence has been introduced here as to the amount of clerical work done there by Mr. Ray; he has given evidence upon that point himself, and I think he counts up about 1,000 folios of work done by him — I don't know that I have a reference to it here — all done voluntarily; no agreement; no contract; simply incidental to his business as a lawyer; no obligation on his part to do it; no authority, on the part of the surrogate, to require him to do it; none of the relations ordinarily existing between a clerk and the person who employs him and pays him, and hires him by a contract. Now, it is certain that he was not regarded as a clerk by the surrogate, by himself, nor by the lawyers generally. There is

nothing wrong, in itself, in the clerk of the surrogate being employed by parties, and paid, to draw petitions and to draw final accountings, etc.; nothing wrong in itself; it is simply wrong because it is prohibited by the statute; that is the only reason why it is wrong. Now, if you could find, and say in your judgment that he was a clerk; there was no intentional wrong; nothing bad in *itself;* simply bad because it is prohibited by the statute; not regarded as prohibited by the surrogate or by him; no substantial wrong whether he was a clerk or whether he was not a clerk, because he was not considered a clerk. If he was a clerk, the bar of Chenango county are just as much to blame for his practicing as the surrogate, or nearly so; it was done openly. Isaac Newton said his practice before the surrogate was just as open as any thing could be conceived. No objection, he said, was made to his practicing by any lawyer opposed to him; yet every lawyer opposed to him had a right to raise that objection. Mr. Newton says none was raised, certainly not by him; scorning the idea of raising an objection to the practice of Mr. Ray in the courts held by the respondent. Now, if you could come to the conclusion that, technically speaking, perhaps, he was a clerk in any sense, when the bar of Chenango county have encouraged him in this manner, have sat silently by when opposed to him, and acquiesced in it and agreed to it, will you, at this time and in this proceeding, punish the respondent because he did not raise the objection? The matter was not called to his attention; no lawyer cited to him the statute; he regarded it as an innocent transaction; it was an innocent transaction, unless prohibited by the statute; innocent in itself. Is it a case for which you are called upon to remove the respondent? I call to witness your own personal observation as to what is done in the other Surrogates' Courts of this State; I know and you know that the same thing has been practiced in nearly every Surrogates' Court in the State of New York; it has been acquiesced in, and has not been considered wrong, and now you are asked to single out the respondent, the county judge of Chenango county, and remove him from his office for this technical — if you shall so find — violation of the law. Is there any evidence that any harm has come to anybody because Mr. Ray has practiced in these courts? Any proof that the decisions of the surrogate or the county judge have been improperly influenced on account of his relations to him, or any other account? Any suspicion thrown upon the judicial action of the respondent in a single case? Not one. Even the counsel have not, in a single instance, so far as I know, questioned the

impartiality of the decisions of the respondent; they have not pointed you to a case that has not been decided, or that has been decided from any unworthy motives. Not one. Are you to leave the substance and go after the shadow? Mr. Ray has really done no wrong; the county judge has done no wrong, only pursued the same course, in this respect, that other county judges and other surrogates have; the same as is uniformly pursued in this State, and yet you are asked to remove him for that. Another thing; suppose it was a technical violation of the statute, for the sake of the argument. It has all ceased; it is a thing of the past, and is never to occur again. Just as soon as the question was raised by anybody, Mr. Ray ceased to perform these clerical duties for the surrogate; ceased it at once; abandoned the office; has gone from the office and formed other relations, and is practicing law elsewhere. No person in the surrogate's office takes one cent for drawing a paper; nothing of the kind is done. It is now, according to the ideas of the counsel upon the other side, "a model office" in that respect, unless you shall come to the conclusion that it is the surrogate's business to do all the work which counsel profess to believe it is his business to do. While the bar of Chenango county, and all other persons in the county, acquiesced in Mr. Ray's practicing and doing this work, the respondent simply did not raise an objection himself, but as soon as an objection was raised, as soon as he found that any person could find fault, or did find fault, or was displeased with his method of doing business, he abandoned it; gave it up; yielded to the wishes of the men who found fault, and he never will do it again. No person believes that any thing of the kind will transpire in the surrogate's office again during the time this respondent shall occupy that office, and yet you are asked to remove him. Now, to show that this change has been effected, I call your attention to Mr. Ray's evidence at pages 754 and 755; Mr. Glover's evidence, page 730. I will also call your attention, upon this question of clerkship, to page 794, the evidence of Mr. Ray, where he is speaking of Mr. Merrill; he says:

"Q. He wrote with his left hand? A. He wrote with his left hand; he was a fair writer.

Q. Was much of any clerical work done by him while he was there? A. I have counted in the records of surrogate's office over a thousand folios done by him while he was there.

Q. What sort of records? A. Miscellaneous records; where all the actual labor of the surrogate's office is, is in the miscellaneous records of wills; that is where the labor lies; I have also counted

the folios of writing done by me, as sworn to here by the witnesses, which, all told, is less than 100 folios."

Again, I call your attention to this position that the bulk of the work done by Mr. Ray, in the surrogate's office for administrators, executors and guardians, was not practicing law at all, and can in no sense be termed practicing law. If I draw a petition for the proof of a will or for the granting of letters of administration upon the property of a deceased person, it is not necessary that I should be admitted as an attorney, to practice in the court. I don't do it as a lawyer. My name is not used as an attorney. Any person can do it. It is not necessary that the person performing this work should ever see the inside of a surrogate's office; it is not necessary that he should be within 1,000 miles of a court, in order that he may draw papers for the granting of letters of guardianship, etc. The great bulk of this work that was done by Mr. Ray was, in no sense, practicing law as an attorney before the surrogate. It may be done by any person, if he knows enough, whether he be a lawyer or whether he is engaged in some other business. The executors and administrators are personally liable for compensation for his services. I call your attention to Dayton on Surrogates, page 653, which says: "Where an executor or administrator employs counsel to assist him in arranging his accounts, and carrying on the proceedings for the final settlement of the accounts before the surrogate, he will be personally liable to pay such counsel his disbursements and for his services, and it is not competent for the executor or administrator to make an agreement with his counsel on which the latter can maintain any claim against the estate." He is personally liable, and would be liable whether the person he employed was an attorney and counselor at law or not. It is for the services of any person capable of doing the work; and it is all idle to say that it is the work of the clerk of the surrogate or a lawyer; so that the great bulk of this work Mr. Ray had a perfect right to do, whether he was a clerk of the surrogate or not. Now, I want to call the attention of the Senate to the evidence at page 423, the evidence of Samuel S. Stafford, which is upon this question of clerkship, and I read it for the purpose of showing how liable witnesses are to make a mistake:

"Q. You have done some business in the surrogate's office at Norwich with Judge Prindle? A. A very little.

Q. State what you know about George W. Ray's being the clerk, the acting clerk of Judge Prindle; state what knowledge you have of his transactions in that regard? A. It is very limited; I have

seen him when I have been there; I have seen him writing in the office, and in relation to business of my own that I went there to get done; I went with a petition once, to obtain citations to the proof of a will; the judge was not in the office, and Ray prepared the citations, signed the judge's name to it, and gave me blanks to make copies; I think that was all there was of that transaction; I came away and the judge didn't come to the office; I didn't see him that day.

Q. He acted for the judge in his absence? A. I didn't see him that day.

Q. In whose estate was that? A. The estate of Nancy Sherwood.

Cross-examination by Mr. E. H. PRINDLE:

Q. Wasn't this the fact; there were blank citations signed by the judge always on hand, and didn't Ray fill them out? A. There were none on hand at that time; he looked for some, and didn't find them; I saw him sign his name.

Q. You are positive of that? A. Yes, sir; he looked for some that had his signature on, and didn't find them."

While Mr. Plumb, who was for a long time previous a supervisor from Sherburne, was on the stand, and after we had got that citation here that Stafford swore he saw Ray sign the judge's name to, I produced it and asked Mr. Plumb in regard to the handwriting of Judge Prindle. He says (at page 873):

"Q. Is that the handwriting of Judge Prindle to that citation that I show you; you are familiar with his handwriting? A. I am; yes, sir; and should call that his signature.

Q. There would be no doubt of it? A. I think not.

Q. And the citation is in the handwriting of Mr. Ray? A. Yes, sir.

Q. Will you admit that is Mr. Stafford's handwriting there; Mr. Stafford has testified that paper was signed by Mr. Ray, and not by Judge Prindle; to say Stafford was entirely mistaken; it is Judge Prindle's handwriting beyond doubt.

Mr. STANTON — That is in the Nancy Sherwood estate.

Mr. E. H. PRINDLE — That is the estate; there is no question about that; the evidence will show; do you admit that is the handwriting of Mr. Stafford?

Mr. STANTON — Yes, sir; signed as justice of the peace to that affidavit; it is hardly necessary to put that in evidence for that purpose; it incumbers the record.

Mr. E. H. PRINDLE — I desire a note taken, that the citation in the

case of Nancy Sherwood was signed by Judge Prindle, and that the body of it is filled in by Mr. Ray, and the proof of service attached to it sworn to before Samuel T. Stafford, justice of the peace, the witness who was upon the stand, and who testified that Ray signed Judge Prindle's name to it."

I called your attention to that evidence to show how easy a matter it is for a witness to be mistaken in regard to a transaction that has passed out of his mind and is forgotten, to a great extent. Now, Mr. Stafford was honest; he is a justice of the peace; he is a practicing lawyer; he had an impression probably left upon his mind that he saw George W. Ray sign the name of the respondent to that citation that he procured, and he testifies to it positively and unqualifiedly, and yet we, in our haste, sent home after that citation, as Mr. Ray was so certain that he never signed Judge Prindle's name to it. We got it here and produced it for the examination of counsel and the Senate, and there was no dispute but that it was signed by Horace G. Prindle, the respondent, himself, and the service of it, sworn to before Mr. Stafford, and yet their witness who was here upon the stand testified that he saw the signature made by Mr. Ray. Now, I will take up another case; of course, I can take up but comparatively few of these cases to go into the details. My strength and your time will not permit it, although this case is one of great importance to the respondent. I will call your attention to charge fifty-three, and the evidence of Mr. Humphrey at page 535:

"Q. Who was present at the surrogate's office when you first went to transact the business? A. There were two young men writing at the table in the corner of the room, and two or three ladies and three or four men about that table; the table was the further table.

Q. Judge Prindle was there? A. Yes, sir.

Q. What conversation had you with him in reference to the business? A. I took a seat the other side of his table, and after a little I took out the papers that Sayre & Winsor made out to have me appointed administrator.

Q. They are attorneys in your town? A. Yes, sir; Prindle looked them over and passed them over to the young man in the middle of the room, and I asked him what time I could have them to go back, and he told me to come in right away after dinner, and I did so, and waited for them to finish them up.

Q. Came in as he stated, after dinner? A. Yes, sir.

Q. Who was in at that time? A. Those ladies were there; two or three of them; one or two men.

Q. Can you tell who those young men were? A. No, sir.

Q. Was Judge Prindle in at the time you came in and got the letters? A. Yes, sir.

Q. State what occurred then? A. I waited for those young men to fill out the writing; I think one of them put it on the book and the other made out the papers; I think Mr. Ray was one of the men; there was something said about the stamps put on the letters, and I asked Judge Prindle where I could get them and he said at the bank; one of the young men got up, I think Mr. Ray, and said he would go and get them, and he did so, and came back and put the stamps on and canceled them and passed it to Judge Prindle, and he signed and folded it up and handed it to me, and I asked him if there was any thing for me to pay on this now, and he said yes; I wanted to pay him for the stamps and doing the writing and I stepped along and asked him how much it was, and he said $6.50, and I paid it.

Q. Did you purchase the stamps yourself? A. No, sir.

Q. How much was the value of the estate? A. I don't recollect.

Q. State the amount of the stamps on the letter? A. Three dollars and fifty cents.

Q. Who did you say it was that told you that you must pay the young men for the stamps and for doing the writing? A. Mr. Prindle told me to.

Q. In accordance with that you paid him the $6.50? A. Yes, sir.

Q. Did you take a receipt? A. No, I didn't ask for any.

Q. Were there any infants interested at that time? A. There were two.

Q. Were there not special guardians appointed? A. I was appointed special guardian.

Q. That was some time afterward? A. Yes, sir.

Q. What relation was Lewis Humphrey to yourself? A. Brother.

Q. Had he a widow? A. Yes, sir.

Q. Letters issued to yourself and the widow together? A. Yes, sir."

There we have Mr. Humphrey coming here, testifying positively to going to the surrogate's office; seeing Judge Prindle and Mr. Ray there; having this conversation with them; they doing this work; Prindle telling him he must pay this amount of money and the payment of it to Mr. Ray. Not one scintilla of truth in the whole thing, except that he came there. Neither Mr. Ray nor Judge

Prindle were in the village of Norwich on that day, as the undoubted proof in this case shows. What were the facts? Why, Mr. Ray was at Otselic trying a lawsuit, and did not get home until evening. Judge Prindle was in Cortland on business, and did not get home until the next day. Now, there was a young man by the name of Merrill, a student in the office, and he, together with a young man by the name of Webster, were the parties with whom Mr. Humphrey did this business, and the surrogate didn't know any thing about it until a long time after. We have the positive proof of Judge Prindle and Mr. Ray that they were neither of them there on that day. And we have the proof of Messrs. Merrill and Webster detailing the whole transaction with Mr. Humphrey on that day. We produced here in evidence the letters of administration issued on that day, by these young men in the handwriting of Mr. Merrill, and dated on that day, and the positive evidence of Mr. Humphrey that that was the exact day that he was there and transacted this business with the respondent and Mr. Ray. You will find Merrill's evidence at page 702, where he says:

"Q. Do you recollect a man by the name of Humphrey? A. Yes, sir, I recollect the case — the Humphrey case.

Q. Will you state what occurred, and where Judge Prindle and Mr. Ray were that day? A. The gentleman by the name of Humphrey, he came and applied for letters of administration of his brother's estate. I think it was — I won't be positive. Mr. Ray was in Otselic trying a case; Mr. Prindle was at Cortland. He wanted to know if the business could be attended to, and I went over to see you; your office was on Main street then; you was not at home, and I went in the opposite office — Mr. Marvin's; he said that the business could be did, and wanted I should send him over; I told him, and he said, if I could do it just as well, he would just as lief I would do it; he had his petition and bond already drawn up. I made out letters of administration and filed the order subject to Mr. Prindle's approval. That is all there was of it.

Q. Now state how it was about stamps and money, whatever it was? A. Well, I couldn't say exactly how much the stamps were; I know he paid me two dollars more than the stamps amounted to for my services.

Q. Did you go and buy the stamps? A. No, sir, I did not; I sent out for them.

Q. Who did you send out? A. Webster; Webster was in the office.

Q. What Webster was it? A. Edward Webster.

Q. Do you remember any thing about who he said had drawn the papers? A. Sayre and Winsor.

Q. You filled out a blank and gave him the letters of administration? A. I did; yes, sir.

Q. And did you record the letters in a book? A. I did.

Q. You did it at his urgent request? A. Yes, sir.

Q. Without any authority from the surrogate? A. The surrogate wasn't there."

And Webster's evidence, page 705:

"Q. Where do you reside? A. In Norwich.

Q. What is your business? A. I have been going to school for three months.

Q. You heard the testimony of the last witness? A. I did, sir.

Q. You remember the circumstance? A. I remember of a man coming in the office at one time when I was there, and wanting some business done, and Mr. Prindle and Mr. Ray had both gone away.

Q. Do you remember what his name was? A. Well, I think it was Mr. Humphrey.

Q. Well, state what was done, as you recollect? A. Well, Mr. Merrill went out to see Mr. Prindle, I think.

Q. To see me? A. Yes, sir; Elizur Prindle; he didn't find him at home, and went to see Mr. Marvin; Mr. Marvin said that he would do the business, or something to that effect; the man told him that he had just as lief pay him for doing it as anybody else, and he went to work and made out the papers; I know that he said that he had made two dollars.

Q. Who went to buy the stamps; do you remember? A. I went after the stamps.

Q. Where did you get them? A. To the bank.

Q. And did get them? A. Yes, sir.

Q. Do you remember what amount? A. No, sir; I do not.

Q. Any thing further in regard to the transaction particularly, that you recollect? A. I believe not."

Mr. STANTON — Will you read over Mr. Merrill's cross-examination; it is one of the last questions which I asked him.

Mr. E. H. PRINDLE — If you will tell me what the page is I will read it.

Senator BENEDICT — It follows right on at page 704.

Mr. E. H. PRINDLE — I will read it, certainly.

"Q. Now, sir, can you tell for a certainty that Mr. Humphrey

never saw Mr. Prindle before he went to Norwich? A. Not on that day, sir, he didn't.

Q. When did Prindle come home from Cortland? A. Well, Ray came home first; I think it was the next day after; I couldn't swear as to the dates; however, I think Ray came home the next day after I issued these letters.

Q. Can you tell just when Mr. Prindle came home from that journey to Cortland? A. I cannot.

Q. You don't know whether he got home the same night that this business was transacted or not, do you? A. Yes, sir.

Q. You have got a distinct recollection of that, have you? A. Well, I didn't see him.

Q. You didn't see him? A. I didn't see him that night nor the next day.

Q. You don't know whether Mr. Humphrey saw him or not? A. I do not."

Now, if the counsel can extract one grain of comfort from that he is welcome to it. Mr. Humphrey swears distinctly that he came into the surrogate's office in the forenoon, some time before dinner; saw Judge Prindle and Mr. Ray there at that time of the day; came in in the afternoon, and saw those two parties there again; had this detailed conversation with them. What difference does it make whether Humphrey saw Judge Prindle during that day or not? Whether, by some velocity unknown in that part of the country, he was able to travel to the county of Cortland and see Judge Prindle or not? Are counsel, by insisting upon my reading a cross-examination of that character, asking this Senate to remove this respondent on account of this transaction? This man Humphrey is flatly contradicted by these two witnesses, who came here and detailed this conversation as it was; yet the counsel sits there and asks me to read his cross-examination where it shows Merrill didn't know of his own *knowledge*, but that somewhere Humphrey saw Judge Prindle on that day. I don't say that Mr. Humphrey intended to testify falsely here; I could hardly believe that, although his character is not above suspicion, as it appears by his declining to answer a question put to him by me. I would hardly want to believe that Mr. Humphrey deliberately swore falsely. He, probably, got it into his head that he saw Judge Prindle and Mr. Ray there, and yet he was totally mistaken. No such persons were there in the village of Norwich on that day, and there can be no question about it, and it shows again with what suspicion you should regard the statements of persons who come before you and

tell you what has occurred in the surrogate's office when the surrogate was there, perhaps alone, or nobody there but this man, Mr. Ray, upon whom he can rely for a statement of the matter. You see what a position it puts the respondent in to answer all these multifarious charges that are coming up throughout the county, and disprove all things that are brought by parties, some of whom do not intend to tell the truth. We cannot always discriminate, and you must rely more upon the general features of this case—you must rely more upon the whole case, as it appears before you, and the general results of the respondent's administration of his office, the general manner in which he has usually performed his duties, than upon some little, miserable, isolated transaction like this one that Mr. Humphrey has come before you and testified to. It is not safe for you to rely upon those long forgotten transactions. Why, there is not, probably, one person in a hundred who, when he goes to the surrogate's office to do business, knows what is to be done; many of them do not know whether they have a petition to be drawn or not; they don't know whether citations are to be issued, or are issued; they don't even know what stamps are to be used. They do not understand the business of Surrogates' Courts, and it is not strange that they come here with mistaken ideas and mistaken testimony. Why, I think there was never a man placed in a worse position than this respondent, called upon to meet these charges, in their very nature calculated to prejudice persons against him. The changes can be rung upon robbing widows and orphans, and the very charge itself, made against a judicial officer, almost decides the case against him in the minds of men. Last fall when these charges were made and scattered broadcast in every school-house, in every hall and in every town, in prints and by word of mouth, he was called upon to meet them all; every person who had ever paid money into the surrogate's office, who did not understand the nature of the transaction, naturally imagined that he had been defrauded. Yet in spite of all these circumstances so depressing, the respondent, on account of the position that he had maintained in that county; on account of the manner in which he had discharged his duties, was able to triumph over them. This man, Mr. Humphrey, was mistaken in another respect; he testified that on the final settlement of the account, he paid Mr. Ray $40; that was not true; the final accounting, sworn to by Humphrey himself, was produced by Mr. Ray, which showed that he only paid him $30, and Mr. Ray so testified. Mr. Humphrey was mistaken in regard to every thing, almost, that he testi-

fied to in this case; yet, upon such evidence the counsel urges the removal of the respondent. Mr. Ray charged this man $30 properly; guardians had been appointed, you recollect; Ray had done that business. The law of 1863, as the lawyers know, allows a compensation to attorneys on final settlement.

I call your attention now, to charge 52, a charge in relation to the estate of Mr. Bowdish; and the charge is that the respondent "did willfully, unlawfully and corruptly tax, allow, and by order grant, out of the estate of said Leonard Bowdish, deceased, and did require Hancy Bowdish, widow of said deceased, and executrix of said estate, to pay out of said estate to one George W. Ray, and did aid and assist the said George W. Ray (who was then and there a clerk in the office of said surrogate) to demand, receive and extort from said executrix, and out of said estate, the sum of $225, on account of the services and expenses of said George W. Ray, as attorney for one C. G. Bowdish, and of expenses of said C. G. Bowdish in and about the proof and probate of the will of said deceased, before him the said county judge and surrogate."

Now, the order introduced in evidence by the respondent shows that no sum was awarded to Mr. Ray, as the charge is made, but the sum was awarded to the party in accordance with the statute; it was ordered to the party, but ordered paid personally to Mr. Ray, because the party who made the petition was absent — was not there to receive the money, and that is the reason, I suppose, that the money was ordered paid to Mr. Ray.

Now, let us see how bad a case this is; but I will here remark, that if you are going to hold judges responsible for every bill of costs that may be allowed by them; going to examine every particular, as the counsel has in this case, you will hold judges to a pretty strict accountability. Lawyers sometimes insert in their taxed costs, some things that are not strictly allowable, and not noticed by the judge. I call attention to the evidence of Mr. Ray, on pages 783 and 785, and I will state, briefly, what some of the facts were in this case. This Mr. Bowdish, who died, was a Methodist clergyman. He left a widow (Hancy Bowdish) but no children, and I think he left some $10,000 or $15,000 worth of property, most of which was in bonds and other securities transferable by delivery. He had been, shortly before his death, visiting in the State of Ohio, and returned to Chenango county, where he died. His next of kin were some nephews and nieces. One of the nephews, who took the most interest in this transaction, resided in the State of Connecticut, and the will gave the use of the property to the widow during her life-time,

at her death to go to these heirs. Now, they had heard that Mrs. Bowdish had expressed the intention of going to the State of Ohio, where she claimed her husband resided, and having the estate administered there, and they feared she intended to take these bonds and securities out of the jurisdiction of the courts of the State of New York, and dispose of them in such a manner that they would never get to their hands. One of these nephews was appointed a certain conditional executor in the will; in case of the incapacity of Mrs. Bowdish, who was somewhat advanced in years, he was to assume the executorship. This is Mr. Ray's testimony at page 783:

"Q. State what you know in relation to that estate. A. The first I knew of it Mr. Charles G. Bowdish came to me in the office, and he said he had been advised to see me in regard to it; he told me that the widow had not notified him of the death of his uncle, and that she had hurried him off to bury him, and that he had, with the utmost haste, got there just in time to see him put into the grave; that he had been informed and believed that he was the executor named in the will; that the widow had refused to let him see or read the will, and had claimed that her residence, and the residence of Mr. Bowdish, at the time of his death, was in the State of Ohio; that if she went there she could hold the entire property, and that she was going to take the will and go there; he said he was informed she was going to start the next day, and he wanted to know what measures to take; I told him that the best thing for him to do was to petition himself as executor to prove the will; to have a subpœna served upon her to appear on that day and produce the will, and I thought that would stop her from going away; he told me all the facts he knew in regard to the matter; we consulted a good while; I drew the petition; he signed it as executor; he was informed that he was the sole executor; I went to find an officer to send up there to serve papers upon her immediately; I could not do it; Mr. Bowdish was anxious to have it done then; I took the train and went to Earlville, and ascertained she was stopping at Mr. Parsons', I think, was the name; I went to the door and every thing seemed to be closed up; I rang the bell, and the door opened just about, I should say, three inches, and there was a lady asked what I wanted; I didn't see Mrs. Bowdish; I told her that I wanted to know if Mr. Parsons lived there; she said he did; I asked her if there was a lady stopping there by the name of Bowdish; she said she believed there was; she said, "What do you want?" I said, "I would like to see Mrs. Bowdish;" she says, "Are you the constable?" says I, "No;" says she, "Where are you

from?" I says, "I am from Norwich; I came directly from the surrogate's office with some papers that pertain to Mrs. Bowdish's estate; they are papers of a great deal of importance, and I want to see the lady;" "Well," she said, she would "see." She left the door and went back, and I saw she was on the look-out for officers, and then I passed right in; I followed her right in to the sitting-room, and I found two ladies there; one of them I found I knew; I had delivered an address at a Fourth of July celebration a year before, and knew this lady at that place; I had made her acquaintance there; I was pretty well satisfied that the lady I saw at the door was Mrs. Bowdish; I took the chances and served the papers upon her, and then I went away, and I returned to Norwich, and immediately informed the Bowdish heirs what success I had had, and told them I guessed that she would be there, and they went home; next day she was down and saw Judge Prindle in regard to the matter; I heard her claim to him that her residence was in Ohio, and that she should not submit to have the estate administered upon in the State of New York; I immediately went to work serving citations; some of the heirs were out of the State, and scattered all over New York State and different places; Annie Ogden was a necessary and material witness in the case, as the young men informed me; they wanted I should see her; I hired a livery team and went to Freetown, in Cortland county, and served the paper upon her, and saw her personally to get the facts from her, in regard to the condition of Mrs. Bowdish's mind; the nephews claimed she was of unsound mind; they claimed she was insane, and, from what I afterward saw of her, I made up my mind there was nothing of that kind; I went to Richfield Springs and served the citation, and I went to Hartwick, in the county of Otsego; I started for Canandaigua, and I went as far as Syracuse, and I heard of the death of a friend and immediately returned; afterward I got service in another way; there was a publication fee, in a State paper, of fifteen dollars and some cents; after the will was proved, Mr. Bowdish came from Connecticut on the proof of the will; after the will was proved, I, at their request and suggestion, filed papers, and got an order for the stay of proceedings; stay of the issuing of letters testamentary to her, until the question should be decided whether or not she should be required to give bail; if you will give me the papers in that estate, I can state what papers were made out and issued (papers handed witness); there was an order for the executrix to appear in the matter on that question, and the order was served upon her; there is the affidavit of service by the officer, and his fees I paid; there was a subpœna served upon

her in the same proceeding, and her fees were paid by me, or by the officer, for attending there as a witness; there is the affidavit of intention to file affidavit, and there is the objection to granting of letters testamentary.

Q. Those are not blanks? A. No, sir; they are all written up in full, for there were no blanks for any such proceeding; when I had got all through with the matter, I wrote to the Bowdish boys in regard to it, and Charles wrote me a letter congratulating me upon our success; in regard to her giving bail, she didn't contest the matter on the return day, although she claimed she should, up to that time; she appeared and gave bail; I drew the bond, and furnished all the stamps and every thing, and had my costs taxed; that is, I had them taxed in this way: I made out a bill, giving my disbursements, as near as I recollected them, at the time; I see now, that there are some slight mistakes; none of any great importance; I had my costs taxed by the surrogate and allowed; that was done in her presence on the final winding up of the affairs; I made out my bill of costs and swore to it, and had an affidavit annexed, and she knew what it was, and the surrogate made an entry and order for the payment of the costs in both proceedings, including all the disbursements; $50 was allowed C. G. Bowdish out of the $225, which I paid him, and have his receipt for; Mr. Bowdish wrote me a letter congratulating me upon my success.

Mr. PECKHAM — Never mind about the matter of congratulation.

WITNESS — They told me they were willing I should have liberal pay out of the estate; I showed Judge Prindle that letter; I appeared and acted for each and every one of the residuary legatees named in the will; the interest of the property was given to her during her life-time, and the fund itself was going to these persons for whom I acted.

There is the testimony, also, of Mr. C. G. Bowdish, which the senators who were present will recollect, who came from Connecticut to see about the matter; and I say here that, taking all the evidence in the case pertaining to that transaction, no lawyer will say that Mr. Ray received too much for his services. Mr. Bowdish's testimony is at pages 695 and 702; but I will not take up your time by reading that evidence. It corroborates and corresponds with the statement of the facts given by Mr. Ray. It appears in the evidence that Mrs. Bowdish consulted me in regard to this matter, and if there is any fault to be found, it ought to be found with me. I confess it. I advised her not to have any contest over the matter. I advised her to go and get the bail, which she did. I advised her

to pay the expenses of the case, which she did. I never had a word with Judge Prindle in reference to it up to that time, or with Ray. Perhaps I ought to have advised her to have contested this bill, but I didn't do it. The taxed bill is at page 821. Now, the charge is that this respondent so awarded to Mr. Ray, etc. That is not so, and it would not have been in atcordance with the law, probably, if he had, as it should go to the legatee; but I say the money was not awarded to Mr. Ray, and here is the order in that case:

"At a Surrogate's Court held at the surrogate's office in Norwich, Chenango county, N. Y., in and for said county, on the 17th day of August, 1870.

Present — H. G. PRINDLE, *Surrogate.*

SURROGATE'S COURT — CHENANGO COUNTY.

In the matter of the execution of the last will and testament of LEONARD BOWDISH, deceased.

The costs of the petitioner, Charles G. Bowdish, a legatee named in the last will and testament of Leonard Bowdish, deceased, in the matter of the proof of said last will and testament of said deceased, having been taxed and allowed at the sum of $180, and his costs in the matter of filing of objections to the issuing of letters testamentary to Hancy Bowdish, executrix in said will named, and proceedings therein having been taxed and allowed at $45, the whole of the costs and disbursements in said matters, as taxed and allowed by said surrogate, amounting to the sum of $225, it is ordered, by virtue of the power and authority in said surrogate vested, that said costs and disbursements be and the same hereby are allowed and fixed at that sum, and said Hancy Bowdish, executrix of said last will and testament, is hereby ordered and directed to pay the same to George W. Ray, Esq., the attorney of the said Charles G. Bowdish, said petitioner, and also attorney for said objectors, on demand. H. G. PRINDLE, *Surrogate.*

Indorsed: Surrogate's Court. In the matter of the execution of the last will and testament of Leonard Bowdish, deceased. Order for the executrix to pay costs. Recorded August 1, 1870, in book of orders and minutes, at page 469.

H. G. PRINDLE, *Surrogate.*"

Now, these items were the expenses of Mr. C. G. Bowdish, the conditional executor, who made application to prove the will in

good faith, having been informed that he was the sole executor. Counsel endeavored to carry the idea to this Senate that Mrs. Bowdish was made to pay Mr. Ray this sum on account of his having been employed by her. There is no pretense that she ever employed Mr. Ray, or that he ever acted for her in any spot or place. He acted for the petitioner in that proceeding, and the petitioner became personally responsible to him for the full amount of his services. These were the expenses that Mr. Bowdish had incurred, and it was right and proper they should be paid. I call your attention to the case of *Collier* v. *Munn*, 41 N. Y. 143, and Dayton on Surrogates, page 653. They come under no fee bill, there is no pretense that they come under any fee bill. They are the costs of the petitioner. When an executor employs a person to draw a petition, or to do any of this work, he becomes personally responsible for the full services, and he is entitled to have that amount allowed him as expenses incurred on the final settlement. They were directed to be paid to the agent or attorney, because, as I said before, Mr. Bowdish was absent. Now, if Mr. Bowdish had been the executor who was to handle the estate, these matters would have come up at the final accounting, but as he was not, they were properly ordered to be paid then. Ordinarily, when the executor has a will to prove, the expenses are brought into the final accounting when the estate is settled, because he has the property of the deceased in his hands all the time, but here it turned out that the petitioner was not the executor of the estate and had not the handling of the funds, but he had a right to make a petition, because, under the statute, every person interested in an estate has a right to do so; he incurred expenses that any executor would have been obliged to incur in the proof of a will, and I say he had reason to fear, with the other heirs, that this old lady would take this personal property, which was transferable on delivery out of the State, and use it for her own purposes, and in such manner that it never would come into the hands of the legatees. The evidence shows that this widow had the intention of going to Ohio and settling the estate there, and, probably if these proceedings had not been, in this hasty manner, instituted, the old lady would have been on her way to the State of Ohio, and the property would have been beyond the jurisdiction of the courts of the State of New York. Therefore, I say these expenses which were incurred by the petitioner, who was not to handle the estate, were properly incurred, and the taxation of his costs was properly and legitimately done, and it should be paid out of the estate, and every person in-

terested in that estate was perfectly satisfied that it should be so paid.

Senator ALLEN—Mr. President: I move that the Senate now take a recess until half-past seven o'clock.

Senator McGOWAN—Mr. President: I move as an amendment that this session be continued until eight o'clock.

Senator LOWERY—Mr. President: I move as a further amendment that we now take a recess until seven o'clock.

The PRESIDENT submitted the question on the amendment offered by Senator Lowery, and it was decided in the affirmative.

November 22, 1872, 7 P. M.

The Senate met pursuant to adjournment.

(Continuation of Mr. Prindle's remarks.)

Mr. PRINDLE—Mr. President and Senators: I will now proceed to comment very briefly upon the thirty-fifth charge, which is sustained, if at all, by the evidence of Mr. Charles A. Fuller, a lawyer, practicing at Sherburne, in Chenango county. He testified to paying five dollars for "*disbursements*," *etc.*, at page 392. There was no pretense that the surrogate demanded any fees of Fuller, but the claim is that he received a letter—although the letter is lost—from the respondent, asking him for five dollars, as disbursements, in a certain proceeding had before him, lasting two or three days on an accounting of an infant. There is something very peculiar about this case. There is no extortion about it; no claim or pretense that it was any thing for fees, but they say it was for "disbursements," etc. It seems that this Mr. Fuller, a full-grown man, and a practicing lawyer, takes that letter and shows it to Mr. Newton, in the village of Norwich, and they talk it over and then lose the letter, and then he goes immediately to the surrogate's office and pays the surrogate five dollars; a lawyer! Having been running about and asking somebody else about it, but don't say a word to the surrogate upon the subject, simply pays him the five dollars. Why didn't he, if he mistrusted there was any thing wrong about that charge, and if he actually paid the money, why didn't he inquire of the surrogate what is this for? I don't know what disbursements you have paid; I don't know what it is for: explain it. He could have modestly asked what he paid it for, but he did not do any such thing. He paid the money, and he left the matter rest from that time until the charge was made last fall. If I were a lawyer and had paid money

under such circumstances, and then had allowed the matter to slumber until the transaction had passed out of the mind of the person I paid it to, I would never make any complaint afterward. I would be ashamed in any spot or place to say I had paid five dollars for disbursements without inquiring what it is for, and then complain about it afterward. Why did not he ask what it was for when the matter could have been explained; before the circumstances were forgotten? There is no proof in this case that these disbursements had not been incurred. Mr. Fuller does not swear they had not been incurred. They simply say they did not know of the disbursements. The party interested in the case has not been brought here. I don't know where he is, what papers he had, what certified copies of papers. Neither of these parties know. Mr. Fuller tells of the conversation that he had with the respondent when the political difficulty arose, and the respondent endeavored to get him to use his influence to quiet the thing in the county. And he says the county judge reminded him of the decisions that he had made in his favor. Did the county judge remind him of the decisions that he ought not to have made, and ask him to support him on that ground? Not at all! And yet the argument of the counsel would, perhaps, intimate that such was the case.

Senator BENEDICT—Did you refer to any testimony on this charge?

Mr. PRINDLE—The testimony of Mr. Fuller and Mr. Newton is all there is. He reminded him that he made decisions in his favor. Doubtless he did refer to cases that he had had before him in which he had discharged his duty as a judge perfectly and correctly. Doubtless he may have done that, but is this Senate to believe that the respondent is a man who went to Charles A. Fuller, intimating to him that he had improperly decided cases in his favor and asking him to support him on that ground? He says he told him he should not ask a favor from him that would not be granted in case he would go in and support him. What did he mean if he told him that? Did he mean that he would act corruptly as a judge for the benefit of Charles A. Fuller? Did he mean that he would do any thing that was wrong? Ah! that so far as he properly and legitimately could, he would stand by him and be his friend—his political friend; his friend as a citizen. But the idea that he professed to him that he was going to exercise his duties as a judge especially for the benefit of Charles A. Fuller is monstrous. The respondent never told him any such thing. He did not swear to any such thing. All that he did was undoubtedly to refer to the cases that he had had before him, and to the manner in which he had discharged his

official duties where it had come under the observation of Charles A. Fuller, and that he properly could do and probably did do. This Charles A. Fuller, let it be recollected, is one of the republicans engaged in this conspiracy against this respondent; one of the men who exerted his powers to the utmost to defeat him. Yet he signed the petition for the increase of his salary long after this transaction, representing him in that petition as a faithful judge, and asking that his salary be increased to the sum of $4,000. I will refer to that petition here. It is signed by every lawyer but one practicing at the bar in the county of Chenango; signed by the editors of both papers published in the village of Norwich, asking that this man who had been exercising the duties of his office, as it is claimed here now, corruptly—taking illegal fees on the right hand and on the left—asking that his salary be increased to the amount of $4,000, and representing him in that petition as the faithful, hard-working judge. How does that comport with the charge that Charles A. Fuller makes here, that he believed him dishonest and corrupt; that he had taken five dollars for disbursements out of him when he ought not to, and that he did not have the manhood at the time he paid it to ask what it was for, when it could have been explained? Remember the instances in which we have shown mistakes worse than that in this case; far worse, by men who had no particular animosity against the respondent, as he has. Counsel says the respondent gave no evidence on this part of the case. It is true! Senators will bear me out in this statement, that at the time we put the respondent upon the stand, this Senate was anxious to adjourn, and we had not time to call his attention to all these *minutiæ*. He was put upon the stand to call his attention to the more important points, and his evidence was hurried through in order that the Senate, at that late hour, might adjourn, and senators might take the train and go home. It was under those circumstances that the respondent was put upon the stand, and the counsel complains because to every little petty charge we did not call his attention, the respondent would have remembered nothing about it; could not have explained it probably, if his attention had been called to it; the transaction had gone out of his mind. Then I will call your attention to charge nineteen made by Charles Todd. It is hardly necessary I should say much about that case. It seems Mr. Todd went there to have a will proved, and there was an infant in the case and a special guardian was appointed, and he paid, as he says, $8.75, I think, and Mr. Ray thought about six dollars. Mr. Ray had a memorandum of the money upon his book, but he complains that,

although it was proper to charge that amount; although it was a proper allowance for special guardian, and more might have been properly allowed, very properly allowed, he complains it was put upon the wrong ground. I call that a case of *damnum absque injuria.*

Senator TIEMANN — What does that mean?

Mr. PRINDLE — I don't know that I can translate it very correctly, but it is a loss without any injury, or something of that kind I believe. The judge was so anxious to cheat, to violate the law — so anxious to take fees where there were none, that he took it as fees and gave it to Ray according to Mr. Todd's statement, instead of putting it upon the proper ground as an allowance for a special guardian. That is what that charge amounts to. Does it look reasonable? Does it look rational? We have introduced in evidence not witnesses to show that ten dollars is a proper charge to be allowed for special guardians who appear on the proof of a will, but a report signed by eminent counsel, and in that report it is broadly stated (and nowhere contradicted in this case) that ten dollars is a proper and reasonable charge to allow to a special guardian for his appearance on the proof of a will. It is the custom in all the Surrogates' courts — the custom everywhere — the custom that has been followed for years and years, and no lawyer will come upon the witness stand and say that $10 is an improper charge, on an unreasonable allowance to be made to a special guardian for his services in such cases. I may remark, also, that it is a position of responsibility. The special guardian is liable to the infant if he does not properly discharge his duty. He may be prosecuted in a suit; he may be called upon to respond in damages; and it is proper that a man who assumes that responsibility, and attends personally before the surrogate, should receive a reasonable compensation for his services in that regard. The law requires the special guardian to appear in person; to be there. Why should not he be paid for his services? Yet this man Todd did not understand the business. That is all there is about it. He was not particularly familiar with Surrogate's Courts. He very likely got an idea in his head that he paid it for something else, and came here and testified to it. Does it look reasonable that the judge should charge him illegal fees, take it and pass it to Ray, when he properly should have allowed Mr. Ray $10 for his services as special guardian? Now, I come to the charge in regard to the report of fees. The number of the charge is not upon my notes. These charges relate to the years 1865 and 1866, particularly. The respondent has been twice re-elected since

that time. He was re-elected in 1867, and re-elected again in 1871. A report of fees was made in 1864 and it was settled by the board (page 456). I am now on articles fifteen and sixteen. It was a detailed report (850), and we have no evidence as to the amount of that report. In 1865 and 1866, reports were made and received by the boards of supervisors which were not detailed reports. They were reports made in gross of certain amounts, and an affidavit was attached to them stating that certain fees had been received; evidently not the usual affidavit that is made, that no other fees had been received. Those accounts in each of those years, together with the affidavits, were required to be published by law in the newspaper of that county, and they were published in the newspapers accordingly, the reports in full with the affidavits as they were made; leaving out that portion of the affidavit usual in such cases, stating that no other fees had been received. The pamphlets that have been introduced here containing a record of the proceedings of the boards during those meetings, are first set up in newspaper columns and printed, and then struck off and printed in that pamphlet form. Every person in the county of Chenango, interested in these matters, read those reports if he desired to, and most of the business men did read those reports. Read the affidavits, and knew the manner in which they were made, and knew the form of the affidavit. Now, what were the facts? Here was the county judge and surrogate, with a salary of $1,000 for both offices, in the county of Chenango, with a population of 42,000; population sufficient so that the office might be divided under the law, and two persons hold the offices; one of county judge, and the other that of surrogate; $400 a year was allowed for fuel, for stationery, for clerk hire, for office rent, and every thing of that character; all the incidental expenses of the surrogate's office; and that was the only sum that was allowed. A thousand dollars salary for both offices, and $400 for clerk hire, for stationery, gas, and other incidental expenses. Mr. Ray was not there in 1864, nor in 1865, nor in 1866. The surrogate had to procure the clerical work to be done; he had to keep two coal stoves running in the winter; he had to pay for the gas and stationery, and the $400 was entirely insufficient to do it. It would not come anywhere near paying those expenses. Bear in mind that after 1864, and in 1865 and 1866, the price of living had increased two and three-fold. Every article, almost, necessary for the support of a family had increased in price, and this $1,000 and this $400 was comparatively nothing to meet the expenses — the necessary expenses of the county judge and surrogate, and the expenses of his office. Mr.

Crozier tells you — he was a supervisor — that they found out that the law prevented their increasing the salary of the county judge. There was talk of increasing the salary of the county judge and the district attorney. The law prevented their doing that. They might have increased the sum to meet his expenses, but he says that neither political party upon the board desired to take the responsibility. That is the explanation he gives of that. They did not want to do it in that way. Mr. Crozier, Mr. Shepardson, Mr. Plumb, and Mr. B. G. Berry, the editor of the Chenango *Telegraph*, then the clerk of the board of supervisors, have all come before you and testified that the affidavit and the whole detailed statement of the account was talked over by the supervisors, and that that matter was well understood. It was well understood the $400 was not sufficient to meet the expenses of the office. Have these men testified falsely; these men who have been elected supervisors year after year? There is not a word of evidence to contradict them. They testified that they understood, and that it was talked over by the members of the board very generally, that these affidavits and these accounts were allowed to be made in that way, in order that the surrogate might keep in his hands something to meet the incidental expenses that he had to pay out. That fact must be conceded because there is no evidence to the contrary. The respondent testifies to it fully. Now, the county judge and surrogate had an equitable claim against the county for these expenses. Mark that! You know that $400 did not pay the expenses of that surrogate's office and the clerk hire. He received a salary of $1,000. He had a right to that salary. No rule of law, or equity, or justice, required him to pay one cent of that $1,000, received for his salary, toward the expenses of running a court; toward the expenses of the county judge's office or the surrogate's office, for the benefit of the people of Chenango county, who are able to pay their own expenses. Rather than do openly, in the board of supervisors, what they ought to have done, the supervisors allowed him to receive a small amount in this way, by not reporting. It was not a regular way of doing business, I am ready to concede. It was not exactly in accordance with the statute, but is there any thing corrupt in that transaction? Is there any thing that shows that the respondent had a corrupt heart? Did he cheat anybody? Did he get any dishonest claim allowed? He had an equitable claim, and no man can deny it in view of the facts testified to in this case. Did he wrong anybody in that transaction? He wanted to live out of his salary; he wanted to support his family, if possible. Prices of every thing had increased. The supervisors

encouraged him in this irregular way — preferred to do it in that way; and it was done in that way the last two years. It was passed over and ought to have rested and never been brought up again. The form of these reports may be found at pages 452 and 453. But I see that we have no real evidence as to what the amount of the fees was during those two years, except the evidence of the respondent, that, on a fair accounting, the county would owe him. That he testifies to at page 878, and I have not the slightest shadow of doubt that that is perfectly correct. I say we have no evidence of what the facts were, except the evidence of the respondent, because the evidence of Mr. Gladding amounted to nothing whatever, nor that of Mr. Thomas. In the first place, they were not competent persons to examine the records of the surrogate's office, and they worked all day in a hurry, trying to figure out something from the records after they were brought here and placed in that room for their benefit, and just at night confessed that they knew nothing of what they had done. They come here and give their evidence, and guess; and on cross-examination it was shown they knew nothing about what they testified to. The law was, where a petition stated "the inventory would not exceed $500," down to April, 1864, when the law was changed to real and personal property, and continued to April, 1866, when it was changed to a $1,000, as shown by the inventory. That was the statute law. I call your attention to the evidence of Mr. Gladding, pages 828 and 846. I do not consider this evidence of importance, but I will call your attention to his cross-examination:

"Q. You say that in the year 1864 there were forty-nine letters testamentary issued? A. Yes, sir.

Q. In how many of them were the real and personal property put together and not separated in stating the amount? A. In the petition?

Q. Yes, in the petition? A. I can't say.

Q. Were there any? A. I can't say.

Q. You cannot say whether there were any that stated that the real and personal property would not amount to such a sum? A. There were eight that stated that the real and personal property would not exceed $500.

Q. How many spoke of personal property? A. Alone?

Q. Yes, sir. A. As not exceeding $500?

Q. Yes, sir A. I cannot tell.

Q. How many said any thing about any property? A. That I can't tell

Q. Were there any? A. I do not know, sir.

Q. How many were there in 1865, where the real and personal property were put together? A. I can't say.

Q. How many were there that said nothing about the property? A. I can't say.

Q. How many were there that stated the personal property would not exceed $500? A. I can't say.

Q. How many were there in 1866, up to April 24th, that said any thing about property at all? A. I can't say.

Q. How many were there in 1866, in which the real and personal property were put together? A. I can't tell that.

Q. How many were there in 1866 that stated that the personal property would not exceed $500? A. That I can't say.

Q. How many were there from the 24th of April that said nothing about the value of the property? A. I can't say.

Q. How many were there that put the personal and real property together, and estimated them together? A. I can't say.

Q. How many were there in which the personal property was estimated at less than $1,000? A. That I can't say."

So we have the same answer in regard to all the important particulars necessary to be known in order to determine the amount of the fees. He says:

"Q. How many petitions for letters of administration for the year 1864, that said nothing about property? A. That I can't say; my answer would be the same to all similar questions." I asked him a great many more questions, and all the answers were, "I can't say," and I say there was no evidence showing the amount of fees excepting the evidence of the respondent. The matters have all been settled by the board of supervisors. (Pages 851 and 857.) The form of the report and the deficiency was known to the members by Berry's evidence (849 and 858), Shepardson (860 and 862) and others. I wish upon this point to again call your attention to the case of the *Supervisors* v. *Briggs*, 2 Denio, 41. Now, I will call your attention to this case for the purpose of showing that the board of supervisors are chargeable with knowledge. How do they obtain knowledge? Each individual obtains knowledge, and the board of supervisors obtained it in no other way, could not obtain knowledge in any other way. The knowledge of the board is the knowledge of the individual members of that board, and they have no other knowledge. Now, I say, the knowledge of Mr. Shepardson, of Mr. Crozier, of Mr. Plumb, of the other members of the board of supervisors with whom they conversed, of the committee that settled with Judge

Prindle, was the knowledge of the board of supervisors, and the board is chargeable with knowledge; and, therefore, there could be no possible fraud. In this case of the *Supervisors of Onondaga Co.* v. *Briggs*, at page 41, the court says: "The plaintiffs have voluntarily paid the money with a full knowledge of all the facts, and cannot, therefore, recover it back." The board of supervisors, you see, can have knowledge. They are chargeable with knowledge as an individual is chargeable with knowledge. They have jurisdiction of this whole matter, according to the statute as it was decided in this case, to settle these matters as they see fit. They may waive the statute or they may insist upon a compliance with its provisions. If they waive the statute, within the purview of that decision, and settle with the officer, on full knowledge of the facts, they can never recover any money back that they have paid, or review that transaction. That is the scope of the decision in the case of the *Supervisors* v. *Briggs*. "But if the taxation is not conclusive, then the matter has been adjudicated" ("adjudicated" is the word used by the learned judge) "by the board of supervisors, who had ample authority to decide it." Now, it was alleged in this case that the district attorney had charged several thousand dollars for things he had no business to charge for at all. But it has been adjudicated, this decision says, by the board, who had ample authority, and their determination is conclusive upon both parties, and especially upon themselves. Then the further point, that "the plaintiffs —the board of supervisors—have voluntarily paid the money, with a full knowledge of all the facts, and cannot, therefore, recover it back." The committee that settled with Mr. Prindle in this manner understood and knew the facts. Their knowledge was the knowledge of the board, even if it had not been talked over, as the witnesses swear it was, in the board. It was not the business of the respondent to go before the full board of supervisors, and tell them all the particulars about this transaction. He told the committee who went to his office and settled with him. I wish I had time to go through with this whole case, but I cannot. Some mistakes were made occasionally, of course. I happen to think of one thing that Plumb, who was one of the members of that committee who signed a certain report, testified to. He testified Ray drew the report, and Ray testified he did not. Mr. Plumb was simply mistaken. Mr. Ray never drew the report. Ray was correct, but it is a mistake. Mistakes will happen, and the respondent is not to blame because witnesses make mistakes. Perhaps it is not of any particular consequence who drew the report, but can you honestly

say that this respondent, if the facts testified to by these witnesses are true, was guilty of any actual corruption and dishonesty? Is there any thing that shows that he has a corrupt heart, because in this manner he was able to eke out a subsistence on that small salary, and the supervisors preferred to have it done rather than come out openly and increase the amount for the expenses of the office and make it a permanent thing? If you can find, under these facts, any thing that is corrupt in that transaction, you can see more than I can. I think a man may have as clean a conscience and as pure a heart as ever existed in the human breast, and be guilty of every thing that this respondent has been in connection with that transaction. If he had been very dishonest; if he had been the man that this counsel would have you believe, he would have probably made the affidavit, and cheated the board, or attempted to, that he had not received any more fees. But he did not do any thing of the kind. He did not make the affidavit; he could not and would not, and the board of supervisors and the committee with whom he settled did not require him to make such affidavit. I come to the fourth charge, the refusal of the respondent to draw papers, and, under that charge, they have proved one instance of that kind, and only one. I don't know as I have any reference to that evidence, but I presume senators have a reference to it. That is the case of Mr. Martin, who was a justice of the peace. (Pages 489 and 490, the associate counsel informs me the evidence can be found.) I suppose he went to the office of the surrogate expressly for the purpose of having a case to present here, and he got one. The surrogate in that case declined to draw his paper for him. He told him he had no person there then to draw papers of that character; that it was not his business, as he understood the law, to draw petitions for the proof of wills; that it was a lawyer's business. Every lawyer in Chenango county knows that Judge Clark, the predecessor of Judge Prindle, acted upon this principle all through his term of office; never drew papers; when parties came before him he uniformly sent them to a lawyer to have their papers or petitions prepared.

Mr. STANTON — Where is your proof?

Mr. PRINDLE — There is no proof.

Mr. STANTON — I dispute it as a matter of fact.

Judge H. G. PRINDLE — The records show who drew them.

Mr. E. H. PRINDLE — I suppose I may refer to matters of practice in the courts of this State without proof in every instance of what the practice is! I suppose I have a right to refer, in my

argument, to matters of practice of that kind, and in this way I refer to the practice of the predecessor of Judge Prindle. It don't make it right, of course, if it was wrong. I ask, has any senator within the sound of my voice heard the counsel read any law that requires the surrogate to draw petitions for the proof of wills; petitions for letters of administration; petitions for letters of guardianship; final accounts of executors, administrators and guardians? We have introduced proof in this case, which is contained in that report, of the opinion of eminent lawyers that that business is no part of the business of the surrogate, or of the surrogate's clerk, but it belongs to the province of lawyers. We have introduced that proof, and have heard no proof to the contrary; and I venture to say that the counsel could not find a disinterested and respectable lawyer in the whole State who would come here and give his opinion that it is the business of the surrogate to do the work, and that the law makes it his imperative duty to do it. This is the theory upon which the counsel have proceeded in this case. They proceed upon the same theory they did in the campaign last fall; that it is the duty of the surrogate to draw these papers. Here is the fee bill of 1844 (page 445, Laws of 1844):

"For the following services, hereafter done or performed by surrogates, the following fees shall be allowed, nor shall they be entitled to receive any other fees therefor:

Drawing proof of a will when contested, or any other proceeding before him, for which no specific compensation is provided, fifteen cents for every folio.

Drawing every petition in any proceeding before him, not otherwise provided for, including the affidavit of the truth of the facts stated therein, fifty cents.

Every certificate of the proof of a will, when contested, indorsed thereon, including the seal, fifty cents; and for any certificate upon exemplifications of records or papers filed in his office, or upon the papers transmitted upon appeal, including the seal, fifty cents.

Drawing, copying and approving of every bond required by law, fifty cents.

Drawing, copying and recording every necessary paper, and drawing and entering every necessary order, and for rendering every other service necessary to complete proceedings on the appointment of a general guardian of a minor, three dollars; and for the like service in appointing the same person guardian for any other minor of the same family at the same time, one dollar and fifty cents.

Drawing, entering and filing a renunciation, in cases where the same may be made by law, twenty-five cents.

A citation or summons, in cases not otherwise provided for, to all parties in the same proceeding, residing in any one county, including the seal, fifty cents; and for a citation to all parties in any other county, twenty-five cents.

A subpœna for all witnesses in the same proceeding, residing in one county, including the seal, twenty-five cents.

For every copy of a citation and subpœna furnished by a surrogate, twelve and one-half cents, and every such copy of citation shall be signed by the surrogate.

A warrant of commitment or attachment, including the seal, fifty cents.

A discharge of any person committed, including the seal, fifty cents.

For drawing and taking every necessary affidavit upon the return of an inventory, fifty cents.

For serving notice of any revocation, or other order or proceeding required by law to be served, twenty-five cents.

For swearing each witness in cases where a gross sum is not allowed, twelve and one-half cents.

For searching the records of his office for one year, twelve and one-half cents; and for every additional year six cents; but no more than twenty-five cents shall be charged or received for any one search.

Recording every will with the proof thereof, letters testamentary, letters of administration, report of commissioners for the admeasurement of dower, and every other proceeding required by law to be recorded, including the certificate, if any, at the foot of the record, when the recording is not specifically provided for in this act, ten cents for every folio.

For the translation of any will from any other than the English language, ten cents for every folio.

Copies and exemplifications of any record, proceeding or order had or made before him, or of any papers filed in his office, transmitted on an appeal or furnished to any party on his request, six cents for every folio, to be paid by the person requesting them.

For making, drawing, entering and recording every order for the sale of real estate, and every final order or decree in the final settlement of accounts, one dollar and fifty cents; and for the confirmation of the sale of real estate, seventy-five cents; and for making,

every party that came before him to have any surrogate's business done; to become the lawyer. I will not dwell long upon this part of the case, because it was so clearly and distinctly argued by my associate who opened this case, that it is only necessary to call the attention of the Senate to the opening of Mr. Glover (pages 659, 660, 661, 662 and 663), containing a clear and conclusive argument upon that point, and giving the definition of "official" from Webster's dictionary, and also giving reasons why it could not be the duty of the surrogate to draw these papers. No surrogate could do it, and his clerk could not do the work — draw these official accountings — and the law of 1863, as the senators all know, gives to the attorney who attends to the matter of the final settlement, a counsel fee, not exceeding $10 a day for all the time spent at the final settlement, and in preparing for it. So far as that is concerned the Legislature have given a construction to this act. But I will not dwell upon that point. All lawyers know that it is the general belief throughout the State, that it is not the surrogate's business to perform these services, but that it belongs to the province of the lawyer. Now, every lawyer of any practice in the county of Chenango (my learned friend, the counsel in opposition, here included), has been in the habit of drawing these petitions for the proof of wills, for the granting of letters of administration, of guardianship and final accountings, and charging the executors, the administrators and the guardians for their services, and if they charge the county judge or surrogate of this county with defrauding the estates of the deceased when he declines to perform these services, and of violating his official oath, I turn upon them and charge *them* with violating their official oath when they do this work, and take it from the estates of the deceased. There is no escape from this conclusion! An attorney and counselor, of course, is an officer of the court, and when he is admitted to practice he is compelled to take an official oath, and, under that oath, no man can consistently perform the services that the law requires to be performed by the surrogate and take the pay therefor from the estates of deceased persons.

If you come to the conclusion that it is the business of the surrogate or his clerk to do all this work for his salary, then every lawyer who has taken pay for these services (as they have done it repeatedly) has violated his official oath and ought to be debarred from practicing. Yet you are called upon to remove the respondent because he has construed the statute precisely as the lawyers have construed it, and acted in accordance with that theory and that construction. If a case shall be brought up in any court of competent

jurisdiction and that court shall decide that it is the duty of the surrogate of Chenango county to do this work, then the respondent will comply with that decision, or he will voluntarily leave his office to some other person who is willing to take his place. But I apprehend no lawyer in the county of Chenango, under such a decision, would be anxious to fill that place. I want to call the attention of the senators, who were members of the Senate in 1871, to the fact that a bill giving lawyer's fees for these services, passed to a third reading, and through a third reading in both branches of the Legislature in the year 1871. I call your attention to that bill.

Senator PERRY — Mr. President: I wish to call the attention of the Senate a moment to offer a resolution, that when the Senate adjourn to-morrow, it adjourn to meet a week from Monday, December 2d, at 4 P. M. The object of making this motion at this time is, to relieve the parties who are here in attendance, and the witnesses in the Curtis case, from the necessity of attending here further this week. It will be remembered that their attendance was required here on Friday morning. I understand that there is a large number of witnesses present, and more who are to come here to-morrow unless we take some decided action in regard to this adjournment. And, if we are not to sit next week, it is but fair to those who are here, that they may have notice of that fact, that they may return this evening if they choose, and that the attorneys may have an opportunity to telegraph and stop those on the way or about to start to come here to-morrow from New York. It has been suggested that we sit to-morrow, and next week Monday and Tuesday. Yet, as we would adjourn on Tuesday, in any event, in consequence of Thanksgiving coming on Thursday, it is deemed advisable to adjourn and pass over next week entirely, and then meet here the following week and go through with the Curtis case. I offer this motion, at this time, in order that the question may be disposed of. It is very likely that to-morrow will be occupied with the Prindle case. There is no probability that we shall be able to make a commencement even in the Curtis case this week. That being the case, perhaps it is the best thing to do to adjourn over for one week and then take that case up.

Senator D. P. WOOD — Mr. President: I will suggest to the senator from the second, that he include, in his motion, a requirement upon the witnesses that have been subpœnaed to be here at the adjournment day upon the subpœnas already served.

Senator PERRY — I accept the amendment.

The PRESIDENT submitted the question to the Senate on the motion of Senator Perry, and it was decided in the affirmative.

Mr. PRINDLE — Mr. President: I was on the point of calling the attention of the Senate to a bill before the Legislature in the year 1871, providing a bill of costs in Surrogates' Courts. I have not had time, since I have been in Albany at this session of the Senate, to examine that bill. I examined it briefly when I was here at a previous time, and I can give no reference to it except that it will be found in the proceedings of the Legislature of that year, and it passed a third reading, as I recollect, in both branches of the Legislature, but in the hasty examination I gave it I could not exactly ascertain why it did not become a law. It received, at all events, the sanction of both branches of the Legislature.

Senator JAMES WOOD — What was the title of the bill?

Mr. PRINDLE — I am not positive, but it was a bill in relation to a fee bill for Surrogates' Courts, and it goes on and for all these different services that it is claimed now ought to be performed by the surrogate — drawing petitions and all of this business which we claim is not the official business of the surrogate — and gives fees for that business to lawyers engaged by any party in Surrogates' Courts. I would be thankful if senators, who have the opportunity, would take pains to examine that bill in order that they may see that the fees there allowed are larger than Ray charged for the services that he performed.

Senator BENEDICT — I don't think, Mr. Prindle, that anybody thinks Mr. Ray's services, as professional services, are exorbitant. I cannot speak for anybody but myself.

Mr. PRINDLE — Of course, I do not know the individual opinion of the other senators, or I should, perhaps, make my remarks shorter; but I call attention to the bill to show that the lawyers in both branches of the Legislature did not regard it as the duty of the surrogate to do this work, but that it belongs to a lawyer to do; a business for which a lawyer has a right to charge. I cite it as a sort of legislative construction of the law. I will speak for a few moments of the fourteenth charge, of willfully neglecting to keep a book of fees. The proof shows that no surrogate of Chenango county ever kept a book of fees. That statute, so far as the county of Chenango is concerned, is a dead letter. It is an old law, passed in 1837, I think, previous to the present Constitution, and never has been re-enacted under that Constitution. Whether it is in force or not may be a question, but we have the positive testimony that no surrogate of the county ever kept a book of fees, and the respondent

only followed in the footsteps of his illustrious predecessors in that respect. He kept no book of fees. There was no such book handed down to him, and there was no such book known to the office. It belonged in the office, if one was kept, and if there had been a book kept, it could have been shown. I will read the bill alluded to by me a moment since. It is entitled "An act in relation to the costs in Surrogates' Courts."

SECTION 1. For proceedings in Surrogates' Courts, to attorneys and counselors at law, there shall be allowed the following costs, exclusive of disbursements in proceedings and matters uncontested. For all proceedings on the appointment of an administrator, special administrator, collector or a general guardian for a minor, $5, and $1 for every additional minor more than one of the same family. On the appointment of an administrator *de bonis non*, or an administrator, with the will annexed, $7.50. On proving a will, or codicil to a will, or for the removal of an administrator, collector or guardian, or to compel an executor, trustee or testamentary guardian to give security; or to compel an executor, trustee, guardian, administrator, or special administrator or collector to give additional security; or for the removal of an executor, administrator, special administrator, trustee, guardian or collector, $10. On proceedings to compel an executor, administrator, trustee, guardian, special administrator or collector, to render an account of his proceedings as such; or on proceedings to enforce payment of any legacy, distributive share or debt, or any proceedings to compel final settlement of the accounts of an executor, administrator, special administrator or collector; or of any guardian of any minor, or of any trustee, $20; and for marshaling and preparing any such accounts and vouchers, preparatory to any such final settlement, such further sum as the surrogate shall deem proper and just, not exceeding $10 per day for each day necessarily occupied in so doing. On proceedings for admeasurement of dower, for leasing, mortgaging or sale of real estate for the payment of debts, $50. For all proceedings on any other non-contested matter or proceeding instituted in said court, $5.

§ 2. In case any of the matters or proceedings mentioned, or referred to in the foregoing section of this act, are contested or litigated, then such surrogate, before whom the same are commenced, may, in addition to the foregoing allowances, allow such further sum in any such proceeding or matter as he may deem just, not exceeding $10 per day for each day necessarily occupied therein, and said surrogate may make a like allowance in any other contested or litigated matter or proceeding pending in said court.

§ 3. In difficult or extraordinary cases, when a litigation has been had in relation to the validity of any will, or codicil to any will, or on any accounting, or any final settlement of the accounts of any executor, trustee, administrator, special administrator or collector, or of any guardian, the surrogate, before whom the proceedings are had, may allow such reasonable counsel fee as he may deem just, in addition to the foregoing allowances.

§ 4. All allowances, costs and counsel fees allowed in said court shall be paid to such party or parties, and by such party or parties personally, or out of such estate or funds as said surrogate shall deem just and equitable.

§ 5. All provisions of this law in relation to costs, allowances or counsel fees in Surrogates' Courts, inconsistent with the provisions of this act, are hereby repealed.

§ 6. This act shall not apply to the counties of New York, Kings or Westchester.

§ 7. This act shall take effect immediately."

I was speaking of this violation of the statute. The counsel on the other side seems to think if a statute is violated, intentionally or otherwise, by any party, he must be held responsible for it, and if he holds an office and an attempt is made to remove him, he must be removed from office. There are very many statutes violated in the country. They become "dead letters," as we call them, and nobody pays any attention to them; and that was the case in reference to the statute in relation to keeping a book of fees in the surrogate's office of the county of Chenango. The district attorney of every county is required by law to file an account with the county treasurer, on or before October 1, of every year, under oath. How many district attorneys are there — I appeal to your experience, senators, as lawyers — that have complied with that statute? I think the thing never has been done since I have known any thing about it, in the county of Chenango, even during the administration of the counsel who is opposed to me. They keep the money they receive on fines and recognizances, instead of paying it to the county treasurer, and apply it upon their salary, and make their statement of the account to the board of supervisors, with whom they settle, and pay no attention to the county treasurer. Yet if any proceedings were instituted before the government for the removal of such district attorney, he ought to be removed, because, perhaps, he had never known there was such a statute, and never took pains to look into it. They are also to pay over all moneys collected on judgments, and fines and costs, except their taxable costs, within

thirty days. (First Revised Statutes, p. 92, 3d edition.) Our district attorneys have not done this, and I don't think many of the district attorneys in the State have complied with that statute. I am appealing to the experience of senators who know about these things.

Mr. STANTON — The facts are false, in that regard, besides not proven.

Mr. PRINDLE — Do you claim that you have made regular reports to the county treasurer, every year, in compliance with the statute?

Mr. STANTON — To the board of supervisors.

Mr. PRINDLE — I am talking about the county treasurer; do you pretend that you have made reports to the county treasurer?

Mr. STANTON — I never received but $7.

Mr. PRINDLE — Did you know there was a law requiring you to make the report to the county treasurer?

Mr. STANTON — I have the receipt besides.

Mr. PRINDLE — I do not accuse you of doing any thing wrong; you probably did not know of such a statute, and if you did you did not violate it corruptly. I understand you made a report to the board of supervisors?

Mr. STANTON — I did also to the county treasurer.

Senator LEWIS — Is the interruption of counsel in order.

The PRESIDENT — It is not.

Mr. PRINDLE — There is no corruption about it. The law requires the report to be made, and I say that statutes are daily violated without any guilty intent. We have a statute against working Sundays; is there any attention paid to that statute? We have a statute against traveling Sundays; is there any attention paid to that? We have a statute against profane swearing; any attention paid to that statute? And, if it is done in such a manner as to have outraged public decency, every justice of the peace, and every mayor, recorder and alderman, is authorized, without evidence, to convict the offender. Yet, would anybody think of removing an officer because he sometimes took an oath: Because he sometimes violated a statute? Would anybody think of removing a justice of the peace, or mayor, or alderman, because, when an oath is taken in his presence, he don't immediately convict and punish the offender? Those statutes are unrepealed, and when you take the ground that every man is guilty and corrupt because he violates the statute, it is broader ground than most of us have ever considered. Horse-racing is a violation of the statute, and it is the duty of all officers concerned in the administration of

justice to attend and forbid such violation, and issue warrants for the arrest of the violators of that law. Is there any attention paid to that statute by officers concerned in the administration of justice? In the village of Norwich we have a race course, where, every few weeks, horses are trotted for money, and it has been done under the nose of the district attorney and he has never paid any attention to it. It has been the case all through the State of New York. District attorneys, and officers engaged in the administration of justice, have disregarded and violated the statute, and do you say they ought to be removed for having done it?

Senator BENEDICT — You don't mean *this* district attorney ever did it?

Mr. PRINDLE — I won't say any thing further about *this* district attorney. I have no hard feelings against him. I don't suppose he has corruptly and willfully violated that statute — perhaps he has done it willfully, if he knew of it, but not corruptly. It does not do, the counsel says, to say he did not know about the law; that is no excuse. The officer is bound to know the law; bound to execute the law; bound to comply with the requisitions of the statute, and are you going to remove all the officers of this State, concerned in the administration of justice, because they have not complied with these various laws, and many others that I might call your attention to? This respondent has been charged with extortion. Oh, what a word that word "extortion" is! How big with meaning. What an awful impression it creates upon the minds of men before whom it is used, and especially when a judicial officer is charged with extortion. It prejudices him in the minds of everybody; and this word has been used occasionally by the ex-district attorney and prosecutor in this case, and applied to the respondent. Extortion! Nothing of the kind has been proved. There is not one word of reliable evidence in this case that the respondent has pretended to charge fees where there were no fees, or too much where there were fees. It is possible that the word "fees" may have been carelessly used, sometimes, by somebody. Witnesses may have come here with the word "fees" in their mouths, possibly; but, I say, there is no reliable evidence in this case that the respondent has ever pretended to charge fees where there were none, or too much fees where there were. Some witnesses may have sworn they supposed they were fees, and, perhaps, they did. In all the affidavits drawn last fall, every party who signed an affidavit was made to swear he supposed they were fees. Now, I want to read from page 674. I will call the attention of the

Senate to it, at all events. I simply refer to this because it contains statutes upon this question:

"Now, I wish to call attention to a further part of that opinion to show the close construction which the judge gives to the statute: 'In the first place,' he says, 'I will inquire what is forbidden by the statute.'

"No judge or other officer 'to whom any fees or compensation shall be allowed by law for any service, shall take or receive any other or greater fee or reward for such service, but such as is or shall be allowed by the laws of this State.' (2 R. S. 650, § 5.) This prohibits the officer from taking a greater fee or reward for some service rendered by him than the law allows for such service, and it only extends to cases where a fee or compensation is allowed by law for that particular service. It has nothing to do with any service not coming within the fee bill; as when an attorney charges his client for a journey, or for drawing or copying papers for which no fee or compensation has been specially provided by law. For certain services the Legislature has given to officers a specified fee or reward, and has forbidden them to take more. But where no fee has been prescribed by law, the Legislature has not undertaken to say how much or how little shall be charged for any service which may be rendered. That is left to be settled by the principles of the common law.

"The sixth section provides that 'no fee or compensation allowed by law shall be demanded or received by any officer or person for any service, unless such service was actually rendered by him.' This provides for the case where the 'fee or compensation allowed by law,' for some service, had been taken by an officer, when the service had not, in fact, been rendered.

"Both sections are confined to cases where a fee or compensation is allowed by law for the service charged; and in such cases the officer is forbidden to take more than the law allows where the service has been rendered, or to take any thing where the service was not rendered. And the violation of either section is made a misdemeanor, and the officer is liable to the party aggrieved for treble the damages sustained. (§ 7.) These provisions, in relation to the taking of fees in civil cases, apply also to the taking of fees for services in criminal cases." (2 R. S. 753, § 17.)

Now, I say it is not, and cannot be claimed, that there is any evidence by which you can find that the respondent in this case has violated any thing contained in those sections. The most that can be claimed on the part of counsel, so far as that is concerned, is,

that the respondent has drawn, in one or two instances, a paper that the law did not allow him to draw. That is the most that can be claimed in this case from the evidence. There is no positive proof that he has violated the law; no case where it is clear upon the evidence that he has violated the law. The counsel referred to all the cases that he could refer to, and then claimed that he had been speaking of *a few* of the cases. He referred to three cases, and they were all that he could possibly refer to. Those were the cases of Mrs. Hook, of Mr. King and Mr. Tillotson, the highway commissioner; all that there could be any pretense where he drew a paper and charged for it that he had no right to. Well, how much worse would it be, if you should find that he has done that, and no person has been harmed? He did not charge any more than a lawyer would charge, and did not do any different from what other surrogates have done. How much worse was that than for some district attorney of some other county than Chenango to sit by and allow horse-racing? He violated the statute perhaps. I am going to argue that question a little. But you will bear me witness, senators, that the surrogates, many of them, in the State of New York—I think there must have been cases within your personal knowledge—have made a practice of drawing these papers to a considerable extent and receiving their pay for it, and clerks in surrogates' courts, appointed under the statute of 1863, have been in the habit of doing this work and receiving pay for it. The respondent has had no such habit. It may be claimed here, upon this evidence, that you have the right to find that, in one instance, he did draw a petition for the proof of a will, or some other paper, that he had no right to draw under the statute. It was claimed by some, that the peculiar wording of the statute of 1867, abolishing surrogates' fees, was intended to give the surrogate the privilege of drawing these papers. (Page 673 of Mr. Glover's opening the wording of that statute may be found.) This is the language of the statute: "From and after the passage of this act no surrogate shall charge or receive any fee or compensation for any official services performed by him." Now, drawing petitions, if our theory of this case is correct, and all this work described in that bill that I have read in your hearing, does not pertain to the official duties of a surrogate; therefore, the statute of 1867 does not forbid his drawing those papers and charging for it. Is there any thing in this law that forbid him to charge for it? Counsel cites the statute which is found, I believe, at page 281 of the case, which is as follows:

"No judge, commissioner, or other judicial officer shall demand

or receive any fees or other compensation for giving his advice in any matter or thing pending before such judge or officer, or which he has reason to believe will be brought before him for decision; or for drafting or preparing any papers or other proceedings relating to any such matter or thing, except in those cases where fees are expressly given by law to such judge or officer for services performed by him."

The old statute expressly allowed him to do it and charge a fee therefor. There was no prohibition therefor. Those are the two provisions of the law. There is no prohibition in the statute of 1867, unless that statute shall be construed to extend the provisions of the previous statute, which it says nothing about. There is no express statutory provisions in this State prohibiting the surrogate from drawing petitions and other papers, not relating to the official duties, to be used in his court. Upon general principles, I think, it is better that the surrogate should not draw those papers. It is better that they should be drawn by other parties upon the principles explained by Mr. Glover in his opening; but the respondent has had no such habit, and only in one instance, at the most, can it be said that he has done any thing of the kind, and in that he may have violated the correct principles of law in drawing these papers, but he has done no worse than most of the surrogates in the State. Now I speak, in connection with this matter, of the forty-ninth charge. It is claimed that the statute was violated by his drawing a petition for the appointment of commissioners to assess damages for the laying out of a highway, and receiving pay therefor. Now, what were the facts in regard to that matter? (Pages 487 and 488, and 910 the evidence may be found.) Perry Tillotson came to the county judge of the county for the purpose of obtaining the appointment of commissioners to assess damages that had accrued from the laying out of a highway. The commissioner was in doubt as to whose damages should be assessed. There was a party whose land had not been taken, but who would be required, in consequence of the laying out of this highway, to build and maintain a fence along the line of that highway, and that was a question which he requested the county judge to examine; not as county judge, but as a lawyer, and decide the case. The respondent has testified that it was a considerable question. You recollect in decisions where railroads run through a man's land, and no part of his land is taken, no matter how much he may be damaged, he cannot recover for any thing, because the courts held that it is for the taking of the land, and not for any other damage, that compensation is required to be

given by the statute. But in this matter of laying out this highway it became important for this commissioner to know whether he was to pay damages to this man whose land was not taken, but who was required to build and maintain a fence along the line of that road. That question the county judge examined, and he had a right to examine it and determine and charge for his counsel, because it never could come before him in any way, shape or manner. The damages were to be appraised, in the first place, by commissioners. The county judge did not determine who was to have damages, or whose damages were to be assessed. The statute provides that all the damages for the laying out of highways shall be assessed. The order made in the case, and the forms of orders made in such cases, don't require, and it is not proper that the persons whose damages are to be assessed shall be named in that order, and the county judge could not determine that question by any means. The commissioners went on and had the damages appraised, or, under the statute, the commissioners of highways were to go on and have the damages assessed by the three commissioners appointed. Is there any complaint that the commissioners appointed in that case were improper men? Not at all. By the statute, in case either party was aggrieved, an appeal was to be taken and that question decided by a jury drawn from another town, and the county judge never had any thing to do with the determining of the question in any way, shape or manner, therefore he had a right to examine that question and charge $10 for it. He drew the papers, and did all the work, it seems. He paid, I believe, part of it to the clerk, and retained the remainder. He had a right to charge for his counsel. Yet, they would have us believe that he charged nothing for his counsel but charged for drawing the papers that were to be used before him for the appointment of a commissioner. And Sheriff Rorapaugh, as the counsel says, who was a witness present upon that occasion, testified, substantially, I believe, that the judge charged for drawing the papers; he did not remember the transaction. Mr. Tillotson testified that he requested the judge to examine this question of law and decide it, or to decide that question of law. Mr. Rorapaugh is mistaken. He did not remember any thing about that transaction, and did not know any thing about any counseling. I do not think there was any thing connected with that transaction which requires a removal of the respondent at the hands of this Senate. He claimed that he had a right to the money, but put it upon the wrong ground. Another case of "*Damnum absque injuria.*" I cite the Senate to the second Revised Statutes,

fifth edition, p. 397, to show that by no possibility could this question upon which he gave this advice and counsel, and made this examination, come before him for decision. I now call the attention of the Senate to the seventh charge, in which it is claimed that the respondent received $500 for his compensation for services in the bonding of the Greene railroad. I do not intend to say much in regard to this charge, because I know there is not any evidence in the case from which you can find that charge proven. Counsel saw fit in his opening to make an attack upon me, individually, because I happened to be a witness in that case. I shall not reply to it. I care nothing about the attack. Whenever I am brought before any body having jurisdiction to try me for any offense, then I shall endeavor to defend myself; but not before. I will not comment upon my own evidence in that case, but content myself with referring you to the evidence of Charles Shumway, a young man against whom nothing can be said, recently elected clerk of the board of supervisors of our county, and now acting as such; the evidence of whom the fair counsel on the other side refuse to read.

Senator BENEDICT — What page is it?

Mr. PRINDLE — 716 to 719. I will allude to some portions of this charge. Now, Mr. Birdsall comes into the Senate and testifies, according to his recollection, that I was employed at the suggestion of Judge Prindle at the commencement of the proceedings in that case. I have no doubt that Mr. Birdsall was honest, and thought there was some such thing occurred; but it never did occur, and there is not the slightest foundation of truth in that testimony. It is flatly contradicted by Mr. Hayes, who says I happened in the office at the ttme the proceedings were going on, and Mr. Birdsall employed me at his suggestion. Birdsall, you will recollect, says he sent Hayes for me, and Hayes says it is no such thing; it is contradicted by him and by the respondent. Mr. Birdsall's evidence upon that point may be found at pages 545, 549 and 550; my evidence at page 711; Mr. Hayes' evidence at page 683, and the respondent's evidence at page 910. Now, they try to make it appear in this case that there was a promise on the part of Mr. Birdsall that the county judge in that case was to receive pay for his services. Some of the evidence may be found at pages 546 and 547. Mr. Birdsall does not pretend to swear to any thing of that character; all that he testifies to is that in an adjournment for dinner, in the presence of all the persons there, sitting upon a bench, he asked Judge Prindle who paid him for his services, and he says that Judge Prindle made a jocose remark, and laughed when he said it, that his was a salaried

office, and he did not get any thing without he got it out of "you fellows." Mr. Birdsall says he told him that it was a matter of importance for his town; they believed that it was bonded properly; all the consents were given, and that he desired to have the judge give the case all the attention that it required, and that is all he does say, and that is all they have to make this charge that he promised to pay him any thing out of. Not one word of that kind did he intimate. The judge made a laughing remark, he says, he did not get any thing unless he got it out of "you fellows." I don't think it is proper to bring that before the Senate to ask a judge to be convicted upon and removed from office. Mr. Birdsall testifies that that is all the conversation he ever had upon that subject with the respondent, and the only remark the judge made was that jocose remark, "unless I get it out of you fellows." I ask the Senate what conversation it was, according to the testimony of Mr. Birdsall, that Mr. Birdsall and Mr. Welch and Mr. Julian gave? Mr. Julian, bear in mind, heard no such conversation; he did not understand that Mr. Birdsall told him any such thing; Welch did. But I ask you to take the evidence of Morris Birdsall who swears to nothing that he told Judge Prindle intimating that he would pay him a cent for his services. Tell me what it was that he had to tell Mr. Welch about the conversation with Judge Prindle in regard to his compensation; and then see whether the testimony of Mr. Welch is credible in that regard.

Senator TIEMANN — Mr. Welch's testimony; how is that?

Mr. PRINDLE — That is what I was speaking of. Mr. Welch was the man who testified that Mr. Birdsall had told him a conversation he had with Judge Prindle about his pay, or that he had agreed to pay him or something of that kind; I don't remember the exact language. I say, take the evidence of Mr. Birdsall, his own narration of the only conversation he swears they ever had upon that subject, and there is no conversation about it there. There is nothing of the kind. If there had been any corruption in that case, what would these men want to divulge it for? Ah, I can tell you how it is, I can point you to the evidence showing where their enmity commenced against Judge Prindle. After the bonding of the Smithville railroad came up they followed him to his private residence and tried to prevail upon him to refuse to decide as the law required him to decide, in favor of the bonding of that town; their feelings were friendly toward Judge Prindle, they testified; perfectly friendly. They say he told them that if the proper evidence was produced, or something of that kind, he should be

obliged to decide according to the evidence. They say he manifested a disposition in that conversation to decide it according to the evidence, and according to the law, and discharge his duty faithfully in that case. Why their enmity? Why their attempt to hatch up something of this kind to ruin the respondent? Because they could not use him as they desired in the matter of bonding the Smithville railroad. I have, perhaps, said more than I ought to have said upon that point in regard to these two men; but I am only commenting upon the evidence as it appears. Their unfriendliness dates from that point, and then these charges are made. Now I say the evidence in this case totally disproves this charge, and there can be no question about that. Charles Shumway was present when Mr. Welch was in the office with me. Mr. Welch had forgotten the presence of Mr. Shumway. He was there, saw the bill handed over, heard every word of conversation, and testified unqualifiedly that nothing of the kind that Mr. Welch testified to was said at all. But I will pass that case. It is not necessary for me to talk about it. I have reason to believe and confidence that this Senate is to be governed by the evidence, and upon that I rely. I now come to the third charge, and I wish to discuss that very briefly. It relates to appointing Mr. Ray special guardian where he was attorney and counselor for parties interested adversely. Now, I make the broad assertion that no case is proved where he has received pay for acting as special guardian, and drawn the papers for the executor and charged for it. But suppose there was! I want to read a word or two from Mr. Stanton's opening, at page 291, which is as follows:

"This respondent has frequently appointed his own clerk, who was an attorney and counselor at law, practicing before him, in the capacity of guardian *ad litem*, and has ordered the payment of money to him out of the estate as such guardian, and he has sometimes, in some cases, explained the large receipts of moneys by himself, upon the ground that he has paid them over to this young man as fees for his services as guardian *ad litem*.

Now, we shall show that he has not only appointed him in cases where this young man was not otherwise interested in the case, thus violating this law in reference to allowing a clerk to practice before him, but has also appointed him guardian *ad litem* when that same clerk has been employed by an executor or administrator as his attorney in the same case. I will dwell a moment now on the duties of a guardian *ad litem*.

What are they? He is appointed by the court to protect the interests of infants who are interested in the estates being adminis-

tered. His duty, if he has any, upon the accounting of the executor or administrator, is to examine the account of the executor or administrator, and to see that the infant is not wronged, that his estate is not prejudiced; and the rules of court provide that the court, in appointing a guardian *ad litem*, shall appoint some person not only competent, but in no way connected in business with the attorney of the adverse party.

In this court held by the respondent, however, we find not only that a man is selected who is not disinterested or disconnected with the attorney of the adverse party, but who is that very attorney himself in the same proceeding, and is also the surrogate's clerk; and he is appointed in this court of the respondent as guardian *ad litem*, for the protection of infants; appointed to watch himself! He, acting as the attorney of the executor, and making out his account, is appointed as guardian *ad litem* to review that account, scrutinize it and see that the interests of infants are fully protected."

I will inquire in what case it has been proved, on the settlement of the account of an executor, administrator or guardian, that George W. Ray has been appointed special guardian? Not one! In a case of that kind and "appointed to watch himself!" Now, let us take up a case where Mr. Ray has been special guardian on the proof of a will. A mother and her child are interested in the estate, and the mother, who is the executrix, perhaps, of the will, comes to Mr. Ray and employs him to draw the petition for its proof. They are both interested in the proof of the will; both desire it to be proved; their interests are not conflicting. Is there any thing wrong—even if it had been the case—in the man who draws the papers being appointed the special guardian of the infant, both interested alike, no adverse interest at all between the parties? There cannot be any claim that there is any adverse interests between the mother and child where they are both depending and relying upon the will and are to receive property under it. Have they shown any case where Mr. Ray has been appointed special guardian, where he has drawn the papers for the executors, and there were adverse and conflicting interests between the executors and the infant? Not one! No such cases have been proved. For proof that special guardians may properly be allowed ten dollars for their services, I refer to page 726, and that special guardians are entitled to pay for their services, to "Willard on Executors," page 425. Now, there was a statute, passed subsequent to the act of 1867—I believe in 1869—requiring the surrogate to take pay for certified copies of

papers. That statute was overlooked, or, rather, the surrogate did not, as he explains in his evidence, take any pay in particular for certified copies of papers. The lawyers copied their own papers and he certified them without charge, but he has since that time reported twenty-five dollars in order to be sure and cover that matter to the board of supervisors, and it has been allowed to the county. Now, the evidence is clear in this, and all the surrounding circumstances show beyond all manner of doubt, that there has been no division of money between the respondent and Mr. Ray. The business has been entirely disconnected; there has been no partnership, and that matter was all very clearly brought out and illustrated, I recollect, by Mr. Ray in response to questions put by Senator Perry; and I don't know that there is any charge made of that kind directly. I did intend to refer to the charge that Mr. Ray received ten dollars for certified copies of the proof of the will of Henry Bennett, but I will not call your attention to it to-night, I am so much exhausted and the hour is so late. The surrogate had nothing to do with it and knew nothing about it, and the evidence shows that Mr. Ray charged a very small fee for the services which he performed, but the surrogate was not responsible in any court. In order to find any of the charges proven, you must find that whatever has been done has been done willfully and corruptly, because such is the language in each case, and I say that under the evidence you cannot find a single charge proven; because, although some things may have been done possibly, in violation of the statute, it was not willful; it was not corrupt. I want to call your attention to another fact. That if the people of Chenango county have a corrupt judge that they are anxious to get rid of, who has been violating statutes; who has been violating his official oath, they have only to indict and convict him there at home, where the witnesses are known, and the conviction works a vacancy in his office. It was not necessary to make all this disturbance, and call all these witnesses here to the city of Albany, and occupy the valuable time of the Senate for this great length of time, for them to get rid of this judge, if they could prove one of the charges that they have brought against him. I call your attention, senators, to this important fact. If they could indict and convict him, according to the statute, for any infamous offense, or any offense involving a violation of his official oath, that worked a vacancy in his office. Why have they not done it? Why didn't they bring this proceeding before the grand jury? They did it, but failed? Why didn't they try again? Indict the respondent

for that act; convict him for that act there at home where he is known, and where his character and reputation are understood and where the real characters of the witnesses who testified are known and understood by the people. Now, I desire to speak very briefly upon another point in this case, and that is, that the people of Chenango county have a right to elect their own county judge under the Constitution of the State. When this respondent, in the fall of 1871, was put in nomination by a political convention, and when the election was held afterward and he was voted for, he was eligible to the position according to our Constitution. The people had a right to put him in nomination; the people had a right to vote for him; the people had a right to elect him, and they did do it, notwithstanding all the charges that were made; and it is in proof before you, senators, that these charges were thoroughly understood and discussed in that campaign, and they were the only questions discussed. That were discussed in every town, and I might say, perhaps, they were discussed in every house throughout the county of Chenango. They were discussed by public speakers. The counsel, who has appeared here, and other lawyers of the county of Chenango, went from town to town, from place to place, and from hall to hall, and addressed the people upon these questions; they scattered their emissaries through every school district in the county; appointed committees to hunt up cases of this character that they have brought here; they did every thing they could to scatter information among the people. On the other hand, the charges were met by the respondent and by his friends. Never, I think, in the interior of this State, was such an election known before as was had in the campaign last fall; and the people, in view of all the facts, knowing all the facts, deceived in regard to nothing, determined that they wanted Horace G.. Prindle, the respondent, for their county judge for the next six years. Had not they a right to determine that question? It might possibly be said that if they had been deceived, if these charges had not been made known until after the election, if some notorious criminal had imposed upon them, and deceived them, and smuggled himself into office under false pretenses, then the Senate might consider the question of removal; but when the charges are all known to the people in whom the Constitution vests the power of election and choice, would it not be a stretch of your discretion to interfere with their choice and remove him, and have, perhaps, the very man appointed to fill his place that the people said they would not have? We live under a popular govern-

ment, the people are sovereign, and I ask this Senate to respect the rights and the wishes of the people of Chenango county. Suppose a President of the United States is nominated by either political party. During the campaign charges of malfeasance in office are preferred against him, affidavits are made and published throughout the country, and the charges are discussed during the campaign, pro and con., in all the political gatherings; and suppose, disbelieving those charges and believing them untrue, after getting all the light upon the subject that they can, the people elect him chief magistrate of the United States — knowing all the facts — knowing all the charges that are made against him — and suppose that after he takes his seat the House of Representatives undertake to impeach him and have him tried by the Senate and removed from office, on account of these charges, do you think that the people would consider that the House of Representatives had any authority to impeach the man of their choice for the chief magistracy under such circumstances? Would the people believe it? Would the people desire to have this matter taken out of their hands under such circumstances? Indeed I think they would not. Nor do the people of Chenango county desire this honorable body to interfere with the election of their judicial officers. It is not necessary for me, Mr. President and senators, to say that this is an important matter for this respondent. It is not necessary for me to say that it is his life. He might as well be sentenced to be executed upon the gallows, so far as his future life is concerned, as to be removed by this Senate. It is a case of the utmost importance to him. Not for that reason, it is true, should you stay your hand if it is your duty to remove him; but for that reason should you exercise the utmost caution before you proceed to that action. If you conclude to remove the respondent from that office, I tell you here that you will do violence to the feelings of a great majority of the people of the county of Chenango. They have expressed their will once, but were it to be expressed again after this almost unparalleled persecution of the respondent, it would be expressed in louder tones than it was before. If you remove him you will only gratify the animosity of a few of his personal enemies, who have been pressing this matter on and paying out their money to employ counsel for the prosecution. It seems to me that this is a case where you are called upon to respect the right of the people of that county, and to refuse to interfere with their choice; and, I can tell you, if you do this your action will be hailed with rejoicing by the great body of the citizens of that county. I shall ever be gratified, Mr. President and senators, for your kind-

ness in listening to me so patiently whilst I have made this lengthened argument; and with these remarks I leave this case, and the fate of the respondent, in your hands, with the fullest confidence that your duty will be faithfully discharged.

Senator PERRY — I move that the Senate adjourn until to-morrow morning at 9 o'clock.

The PRESIDENT submitted the question on the motion of Senator Perry, and there being no objection, it was declared carried.

SATURDAY, *November* 23, 1872.

Senate re-assembled at 9 A. M.

The PRESIDENT — The counsel will now proceed with his argument.

Mr. PECKHAM — Mr. President and Senators: I congratulate you upon the approaching termination of this exceedingly long and tedious investigation; and the patience with which you have listened to the evidence and to the arguments of the counsel for the prosecution and the defense admonishes me that I must be reasonably brief in my remarks, and I shall endeavor so to be.

It would not be profitable under any circumstances for me to go at length into the general charges that have been made, and to comment in detail upon each one of these charges. That has been already done by my colleague; it has been replied to by counsel for the defense, and I shall content myself upon this occasion with a general summary of the evidence in the case, and with a statement as to what, in my judgment, that evidence proves.

There were several statements made by the learned counsel upon the other side during his remarks, which were not exactly germane to this case, and which, at all events, had no effect or bearing upon the material points involved in it. Those remarks I shall not reply to. I am too well aware of the necessity the senators feel, for leaving this city at as early an hour as they reasonably can, to take up their time in replying to any matter that has been advanced on the other side, not strictly and fully material to the questions at issue in this case. I had intended not to say one word in regard to the power or jurisdiction of this body over this respondent, and should not now, if it were not for a question put by one of the honorable senators, where he asks if certain actions were not performed by this respondent, in his character as an attorney and counselor at law, and if he had performed those actions as such attorney and counselor,

whether the jurisdiction of the Senate in that case did not cease? I deny it. I hold that by this section of the Constitution, under which this respondent is brought before this body, you are not confined in your order for removal; in your finding of guilty, to any charge which affects simply and solely his *official* conduct, you have the right — yes, and it is your duty as senators, sworn to discharge that duty, to look upon this respondent and the actions which have been proved in this case, and from those actions determine, in your just, proper and honest discretion, whether such a man as those actions, thus proved, show him to be, is a fit and proper man to occupy the position of county judge and surrogate of Chenango county. I hold that this Senate is on record, in this and other cases, upon this point, so that it is unnecessary to discuss this question at any great length. Look at the provisions of the Constitution itself, and you will find ample authority for the doctrine which I contend is the true, the manifest, and the just one. I call your attention to section 11 of article 6 of the Constitution, where it says "all judicial officers, except those mentioned in this section" — that is, judges of the Court of Appeals and justices of the Supreme Court — "and except justices of the peace and judges and justices of inferior courts not of record, may be removed by the Senate on the recommendation of the Governor. But no removal shall be made, by virtue of this section, unless the cause thereof be entered on the journals, nor unless the party complained of shall have been served with a copy of the charges against him, and shall have had an opportunity of being heard."

Now, under that section of the Constitution, it is not necessary that the charge upon which removal is asked shall be one of *official* misconduct; it is sufficient, within this section, if, in the first place, there be a recommendation of the Governor; second, that a copy of the charges shall be served upon the accused, and he shall have had an opportunity of being heard; third, a vote of two-thirds of the members of the Senate assenting thereto; and fourth, that that vote shall be entered upon the journal of the Senate. Right here is lodged the power, among you, as the representatives of the people of the State at large, to remove any judicial officer mentioned in that section, for any acts which may, in your high discretion, regulated by your constitutional oath of office, seem properly to call for such removal. Now, I will call your attention to the fact that this very question has been decided by the Senate in the case of *The People* v. *George W. Smith*, and here is the record of that trial, which I will read from; I read at page 39 what

these articles were, upon which this man was subsequently removed by the Senate. The first charge, which was found proven by the Senate, alleged official misconduct. The second also alleged official misconduct, and was found proved by the Senate. The third and fourth also alleged official misconduct, but were found not proven. The sixth, seventh and eighth alleged misconduct in his capacity as a citizen and a man, and were found proven; and the ninth charge alleged official misconduct, and was found not proven. And upon that record the Senate removed George W. Smith from his office of county judge of Oneida county; and it was upon those three charges, the sixth, seventh and eighth, more than upon any other — charges, not of *official* misconduct, but of misconduct as a citizen and as a man — that he was found guilty, and upon which he was removed from office. Now, this very question was open in that case, and I call your attention to the remarks of Senator Gibson, at page 54 of this same case, to show that this question was up, where he is speaking of the charges against the respondent, Smith, as a citizen and a man, having nothing whatever to do with his official conduct, and he proceeds to discuss that question, and no man can read it, I think, without seeing and admitting its fairness and justice. I shall not take up your time with reading it myself, but refer you to it and you can read it and see for yourselves. But on page 56, in regard to this question, he also says: "The administration of the laws requires that the judge shall possess the most perfect integrity, and the moment that the people cease to feel that the courts are possessed of this essential qualification, they will, of course, cease to have confidence in their judgment. Would the people be likely to believe that the laws were fairly and faithfully administered, when the judge spends a good portion of his time in the exercise of extortion; in conspiracy to defeat the ends of public justice, by the suppression of evidence; in the bribery of a public officer; in the betrayal of a client; in consorting between two bounty broking thieves to fill the armies of the union with the 'scum of the earth;' in enabling deserters to escape from military service; in violating the general regulations of the government, as to recruits; and in turning the aid of his official station to the benefit of himself and his partner, at the expense of the true interests of the people, and in plain violation of the laws of the land?" This is what Senator Gibson, himself a member of the Senate which passes the judgment in this case of Judge Smith, says where he speaks of the reasons which may be alleged against a person as to his moral unfitness, as to his general characteristics being such as to unfit him

for the exercise of that high judicial station in which the vote of the people of the county, the district, or the State, perhaps, may have placed him; and in the argument of the counsel, at page 515 of this same trial, you will find the same remark, substantially. Mr. Sedgwick, in arguing this very matter before the Senate, and where, I say, the Senate, by a vote, has recorded itself as claiming to exercise this species of jurisdiction, says: "I say, in the next place, that the power of removal may be used for any cause which the Governor thinks sufficient to warrant his interference, provided the charges on which he base it are proved to the satisfaction of the Senate, and they concur in the Governor's recommendation. Counsel upon the other side contend that it can only be for mal or corrupt conduct in office; for some offense belonging to the official station; for some offense constituting official misconduct, or for a felony, after conviction. But in the latter case, as I have observed, no recommendation of the Governor or action of the Senate is necessary. The statutory provision in regard to vacancies in office applies to every officer in the State. His office becomes vacant by death, by removal, by neglect to take, within the prescribed time of the law, the oath of office, by the conviction of a felony in any court of competent jurisdiction, and renders *ipso facto* his office vacant. It is not a removal in any proper sense of the term. Therefore, I say that the construction upon the other side is much too narrow. That the construction which the counsel gives to the power of removal under the eleventh section, sixth article, would not allow public officers to be removed for imbecility; for failure of their faculties; for insanity; for intemperance; for any disqualifications of age or sickness, or for any of the causes which render it necessary for the public benefit, for the protection of the community, that officers who have become incompetent to transact the business of their offices may be removed. And I contend that the whole scope of the Constitution and the laws under it show that the people of this State did not intend to leave themselves so powerless in the hands of incompetent and imbecile officers, and that besides this general power of impeachment, where punishment was not required, in the hands of some power of the State, either the Governor or the two branches of the Legislature, or Supreme Court, or in the hands of the Canal Commissioners or Comptroller, or in some other place they intend to place the power of removing every officer who should prove unfit or incompetent to the discharge of his duties. There is no restriction in the language of this article of the Constitution to removal for impeachable offenses, nor is there any restriction to

removal for offenses not impeachable. They might have confined this inferior power of removal, without punishment, to causes for which officers could not be impeached. But any senator who will take the time to examine these two provisions of the Constitution, will see that the intention of the people in framing the Constitution was, in cases where men became unfit to continue in public station, to have some ready and prompt method of removing them from office without going through the tedious course of action by impeachment, and, I say, that among the causes for removal, or causes for offenses not impeachable, are those of imbecility, immorality, drunkenness, and such conduct short of crime, in respect to judicial officers, as brings the administration of justice into contempt."

Now ex-Senator Shafer was one of the counsel for the respondent in that case, and he, at page 449, took this same line of argument that has been taken by the counsel here, objecting to the jurisdiction of the Senate on the ground that the charges six, seven and eight were charges not of official misconduct, but of misconduct of the party as a citizen and as a man; but the Senate overruled that; the Senate admitted evidence in regard to those charges; the Senate found that those charges, thus made, were proven; that the respondent was guilty of those charges; and that he must be, and he was, removed from office. I cite you, also, senators, to the argument in this very case of the demurrer, put in by this respondent to those charges, where my senior partner, Mr. Tremain, argued the cause on the part of the prosecution, and at pages 210, 211 and 217, he shows conclusively, it seems to me, that the power of this Senate is co-extensive with that section, and that to no cause, simply and purely official, is the Senate limited to decide upon, but that it is to take up the conduct of the person charged, as charged in the articles sent by the Governor to you; and if, upon a broad summary and review of those articles upon the evidence in the case, as it has been proved and brought before your minds, you shall determine that the man is guilty of those actions, is unfit and unworthy to occupy a seat upon the judicial bench of this State or county, then in your discretion, acting under the official oath of a senator of this State, you are bound, and it is your duty as an honest man and an honest senator, to proclaim his guilt, and to remove him from the office which he disgraces while he fills it.

I shall come now to speak, briefly as possible, upon some of the charges against this respondent. I agree fully and completely with the statement made by the learned counsel who addressed you for

the respondent; it is a case of great importance; it is a case of the very last importance to him; his whole future life is involved in your decision, and if he goes forth from this Senate stricken, as I claim he ought to be, with a sentence of removal, it darkens and saddens the rest of his life; and that pain comes not alone upon him, but it sinks with the weight of an overwhelming burden upon his family — his children, his wife. But notwithstanding that, senators, notwithstanding the care and the caution which you should exercise as honest men, if, upon your oath, you believe this man to be guilty of the charges which have been preferred against him, we shall claim from you this very verdict. Not in a spirit of revenge, not in a spirit of vindictive persecution, but that the violated majesty of the law may be vindicated; that justice may subsist unpolluted and undegraded throughout the length and breadth of this broad State, and that it shall be said hereafter, when the record of this case is gazed upon, there was a man guilty of acts which made him a disgrace to the office which he occupied; and the Senate of the State of New York, occupying the position of judge in such case, let that sentence descend, and *removed* him from that office which he had thus disgraced and degraded; but we ask that, as I said before, not unless you come to the conclusion that these charges have been proved; not unless you come to the conclusion that the charges thus proved do unfit a man for the occupancy of a seat upon the bench of the highest court of the county. But if you do come to that conclusion, we demand it in the name of justice.

Now, I shall not spend time in regard to the question as to whether this respondent was bound to draw the different papers which have been set forth in the case. I shall content myself with a brief statement of our position upon that point. By the law of 1844 the surrogate was allowed certain fees for certain duties, which were termed "official" in that act; "*official duties;*" and in that act are contained all, or nearly all, the acts which have been proved in regard to the respondent in this case. Then after that the fees of the surrogate were taken away from him personally, and made returnable to the county treasurer, and he was prohibited from doing this work, mentioned in this act of 1844, unless upon the payment of those fees, and upon the payment of those fees he was, by the statute, directed to perform them. Now, we have in the first place a designation, by the statute itself, as to what are "official" services, and that upon payment of the fees designated the surrogate is directed to perform those services mentioned in that act of 1844. Then subsequently to that the fees are

abolished, but *nowhere* is the duty imposed upon the surrogate, for the performance of those services taken away, and after the office was made a salaried office the surrogate had no further interest in those fees whatever, but the duty still remained on him of drawing those papers, under the act of 1844, upon the payment of those fees, and the fees were to be accounted for by him. Then when the fees were abolished entirely it simply withdrew the necessity on the part of the person coming to the surrogate, and asking him to perform those services, of paying him one cent of the fees which the surrogate had been up to that time required to collect, but the duty still remained upon the respondent and every surrogate in the land, to perform those services upon the request of any person coming there, legally and lawfully, with such a demand. Now, there is no question that these services have not been performed by this respondent; there is no question but that during the whole period of his sitting upon the bench he has refused to perform them, and he comes now into court and claims that he is not bound to perform them. Very well; he assumes that position at his peril. If he assumes to say that his construction is right, and he refuses to perform these services which, at other times, he has been compelled to perform by the statute itself, when the fees were attached; if he assumes to decide that question for himself, then, senators, he decides it at his peril, and the peril is that if, upon investigation and argument, it be found that he was wrong, and that not only was he wrong but there was really no honest, *bona fide* ground upon which he could base his refusal, then he must stand or fall as stands or falls the argument which he makes.

I will come now to a general discussion of what I claim the evidence proves so far as regards the question of taking fees, the clerkship of Mr. Ray, and matters of that kind as contained in these charges, and I will assume to prove, as existing facts in this case, from the evidence, first: That Mr. Ray was in fact the clerk of the surrogate. Second. He was paid by the business thrown to him by Judge Prindle, out of the estates of deceased persons administered upon by Judge Prindle. Third. That this was by an arrangement in terms or by a tacit understanding, and in either event it was essentially illegal and corrupt. Fourth. That being his clerk, Ray had no right to practice before Judge Prindle, and Judge Prindle knew it. This makes a plain violation, first, of a statute known to the respondent to be in existence; second, an illegal and a corrupt act; and third, an act in fact done in his official capacity; and as a

consequence, ample ground for removal is shown, and removal should follow.

Now, first, was Ray the clerk of Judge Prindle within the meaning of the statute upon that subject? I aver he was; I ask can there be, in the mind of any intelligent senator who listens to my voice, one particle of honest doubt, whether, in fact, George W. Ray was the clerk of Horace G. Prindle? My learned opponent, in his argument before you, commences with looking out the word in some law dictionary to find out what is the definite, precise and strict meaning of the word "clerk," and he asserts that neither in the Law Dictionary nor Webster's Dictionary is the meaning given under which Ray will come in this case. I dispute it. Gentlemen, you know that a statute is to be understood or construed according to the condition of things at the time of the passage of the statute, and with reference to the evil for which it was passed as a remedy. Now, under these ideas, what was the state of things when that statute was passed? This act, in relation to surrogates, was passed in 1844, which provides that no clerk of a surrogate shall practice before him. Bear in mind, gentlemen, that there was no statutory clerk in existence at that time; it was not until some years later that the statute was passed which provided that a person employed *in the surrogate's office* should be appointed by the surrogate to certify papers in the surrogate's absence, etc.; but in 1844 the statute was passed which says: "No son, partner or clerk of any surrogate shall be permitted to practice before such surrogate as attorney, solicitor or counsel for any party to any proceeding before him." *No clerk* shall be permitted to practice before him. Now, there was no statutory clerk. What *did* the word "clerk" mean? The meaning and object of that statute was that no person or persons holding a confidential relation to the surrogate — being in his office; assisting him in the writing of the records of his office; assisting to perform, in other words, the clerical work which was necessary and proper to be performed in that office; no person thus situated, actually aiding and assisting the surrogate and bearing confidential relations to him, should be permitted to practice before him. The law recognizes to so great a degree the inherent weakness of human nature that, in order to take away from the surrogate even the appearance of evil which might exist if the person occupying that confidential relation to him were permitted to practice before him, that it, in so many words, prohibited such act from being done. There never were words of a greater or more serious import spoken,

words that more exactly fitted our weak and erring nature, than were spoken by Him who spoke as never man spoke when in the prayer which he gave to his disciples and to all men, he said: "Deliver us from temptation." This statute was passed for that very purpose, of taking away from the surrogate the power or possibility of being tempted or diverted from his official duty in the slightest degree by reason of those relations of private confidence which naturally and necessarily exist between the surrogate and the person occupying his office, aiding and assisting him in the clerical duties which were necessary to be performed in that office, and thus situated, occupying a position I say of such confidential relations that the statute steps in and says no such man shall appear before you at all. We will deliver you from all this temptation, and, that you shall not only do justice, but that you shall also seem to do justice, we will put it entirely out of your power to have a confidential man at your elbow practicing before you as a surrogate. Now, that was the object necessarily and unmistakably, with which this statute was passed; and George W. Ray comes within the purview, the fair, legal, honest meaning of that statute. I ask, can there be a doubt of it, from the evidence that has been adduced in this case? I wish, briefly, in addition to what has been said by my associate, to refer you to a portion of the evidence upon that subject. Mr. Ray went to the office of this surrogate, before he was admitted to the bar, as he claims, to read law with the cousin of the surrogate, Elizur H. Prindle; he occupied the same office with the respondent; an office furnished by the county of Chenango, where no office rent was paid, and which was the official office of the surrogate; then, after his admission to the bar, he still continued there, and by his own testimony, at page 752, he says: "When people came there to have business transacted, and the papers were not drawn, I almost always — not always, but almost always — would draw their papers, and enter the orders in the books, and pass the books to Judge Prindle, who would sign the orders in the books." Now, Mr. Ray testifies that he never received any compensation; he says when people came there who had not their papers drawn, he "almost always — not always, but almost always — would draw their papers, entered the orders in the books, and passed the books to Judge Prindle, who would sign the orders in the book." Now, what is that but a clerk? He charged no fees for such services; acted as the assistant, the amanuensis, the penman, the scribe of this judge. Is not that a clerk, within the meaning of the word as laid down by Webster? Coming under that definition entirely by the performance of those

duties which a clerk naturally would, and, as matter of fact, actually does perform.

I also refer you to the testimony of Mr. Albert F. Gladding, at pages 423 and 424, which shows that even before his admission Ray is found doing work for the surrogate. His handwriting appears in the records as early as July, 1866, and from that time to the present (the time of testifying) there were 405 letters of administration granted, and since 1869, almost all are in the handwriting of Ray, and out of the 405, 300 are in his handwriting.

Then take the evidence of Edward B. Thomas, pages 427 and 428, and he says, that during the year 1868 the record of letters testamentary are almost all in the handwriting of Mr. Ray.

Then take the testimony of Isaac L. Newton, pages 397 and 398. He is a lawyer practicing at Norwich, and has frequently seen this man Ray at the surrogate's office performing such duties as recording papers, copying citations, issuing citations and preparing affidavits of the proof of wills, etc., *and he has seen no other person performing them except Mr. Ray and the surrogate;* also the testimony of James G. Thompson (page 369), the man who was appointed the statutory clerk by Judge Prindle, and only acted for the purpose of certifying papers; never copied a paper, made an entry in a book, or did any of the duties that a clerk is supposed to do and is employed to do; this he swears to himself; and he also swears at page 371, *he supposes Ray did the principal part of the clerical work in that office in* 1867.

It is the merest flimsy delusion in the world for any sane man to come here and think that, by such argument as has been addressed to you on this subject, you can be deluded for one moment into the belief that George W. Ray was not the clerk of this surrogate, within the meaning of every definition of that word, as ordinarily understood by those who pass the statutes and those who obey them. In making this statutory clerk, the law was violated, because the statute provides that the surrogate may appoint a person *in his office* to do such duties; this man Thompson had never been in his office, and was not in *his* office at the time of his appointment, and had no intention of going into it, and he says he never performed one single clerical duty except to sign some papers during the absence of Mr. Horace G. Prindle; that is all he did or ever pretended to do. He says he never *made* a copy or did any of the duties for which a clerk is employed.

Then from all the evidence in this case, as is shown by parties who came here and testified in regard to going to the office

of the surrogate to have papers drawn, you will find from the evidence of almost every witness who testified here, that he came to do business with the surrogate, supposing it was work for the surrogate himself to do, and that the surrogate himself, when requested to do it, passed it over to Mr. Ray, and none of these witnesses ever thought for a moment but this work was being done by Mr. Ray, as the clerk of the surrogate; yet you were asked here, and against evidence overwhelming and convincing, you are asked to say that this man was not doing this as a clerk, but in some other capacity. They say that he was an attorney and counselor at law, and that he advertised as such in the chief papers of the county. What of that? He wanted to do more work than could be done under ordinary circumstances; he wanted to do, not only the work that was thrown to him by this man Prindle, but work which he could acquire by this advertising his position as attorney and counselor. Has that any thing to do with his position, which we claim he occupied as clerk, that, in addition to his clerical duties, he could do something else? Nothing, whatever! Why, there are men to-day, in the city of New York, lawyers, who act as managing clerks for other lawyers, and are receiving a salary of $1,000 to $1,500 a year, and even more, and their experience peculiarly fits them for the position of managing clerks for large firms. So here, this man, as an attorney and counselor at law, could do this business much better than he could if he had not occupied that position; and yet, under these circumstances he is, beyond all question or contradiction, *the clerk of this surrogate*, within the meaning of that statute; and I ask any honest man, apart, separated entirely from any question that may arise in this Senate hereafter, upon a mere question of fact, whether this man on this evidence was not a clerk, within the meaning of that statute? What is Webster's definition of the word "clerk"? "A writer; one who is employed in the use of a pen, in an office, public or private, for the keeping of records or accounts, as the clerk of a court," etc. A writer? the same as this man, performing these services which I say he did perform, and of which there is not any contradiction. I say he comes within the *very* definition as laid down by Webster, and by Walker also.

Now, what is the proof on the other side? None; absolutely none, with the exception of George W. Ray and Horace G. Prindle; and mark you, senators, they even do not deny, for they cannot deny, the facts which we have proved, and from which, we say, the presumption of his being Prindle's clerk conclusively arises. They do not deny these facts, but they come here, and squarely, as they were

driven to it necessarily, deny the existence of the clerkship in fact. Now, in regard to that, I have a word to say, and let us look at this testimony of Mr. Ray. In the first place, is he not, in fact, although, perhaps, not in law, the *particeps criminis* of this man Horace G. Prindle; he is the partner in guilt, and, even if he were uncontradicted by any single witness, it would be necessary for you to scrutinize his evidence with the very greatest of care. But you find him contradicted by a dozen witnesses who testify in many instances in direct contradiction of the respondent and Ray. These witnesses are absolutely impartial, without the least motive for saying one word that is not true. I am not going all through the testimony of these different and contradicting witnesses, for I have not the time; but I call your attention to the witnesses whom I have casually picked out as contradicting Ray in every essential particular. In the first place, he is contradicted by Frederick B. Coates at pages 309 and 313. Coates has no motives for prevaricating one particle from the truth. Coates says he paid Judge Prindle twenty-seven dollars in all, and swears that he never employed Ray, and didn't know him until the day he went there for final settlement.

Ray's evidence at page 774, is entirely at variance with this in almost every particular, and especially where he says the receipts were read over to Coates. Second, is the testimony of Charles Todd, pages 415 and 422. The story detailed by him also differs entirely from that of Mr. Ray at page 761. The same remark applied to Coates applies to Todd, that he had no motive for suppressing or coloring the facts.

Again, Joseph M. King, at page 465, says he applied to Judge Prindle for letters of administration and that he paid him ten dollars; he did not employ Ray. Subsequently he employed Ray to do some work and he paid him $128.60. This is contradictory of Ray's testimony at page 763.

Again, De Witt Craft, page 476, says he employed Judge Prindle and no one else and did the business with him and paid him $20. While Ray's evidence at page 765 again makes an entirely different case.

Also, the testimony of Frederick W. Furman, page 579, on the proof of two wills, absolutely uncontested, says he paid Judge Prindle $40 for the proof of the wills, as he supposed; he did not employ Ray. The judge put the money in his pocket (page 582). Mr. Ray makes an entirely different story, and swears Judge Prindle was not in the room when the money was paid. This testimony of Ray's you will find at page 768.

And again, John S. Eddy, at page 495, swears that he employed Judge Prindle to prove a will, uncontested; that he did not employ Ray. He paid the money ($25) while Ray was on one side of the table and the judge on the other. Ray swears entirely different; that he remembers distinctly the money was paid to him during Judge Prindle's absence (pages 769 and 770), and again at page 807 he flatly contradicts Eddy, and swears that Eddy knew he was employed. Judge Prindle and Eddy were at no time together while this business was being done, and he assumes to accuse the executor of either being mistaken or willfully misrepresenting one or two facts.

Dennis L. Shepard, at pages 441, 444, and 445, testifies that he had a final accounting, not contested, both Prindle and Ray present, and Prindle said to Ray, "put in $20 for our services to-day," which was done and the money paid. He had never employed Ray or any one but Judge Prindle. Mr. Ray swears, at page 771, that there was a contest, trouble between Mr. Shepard and the widow, and that Shepard was considerably angry at him because he stood up for the widow.

Again, Seth Chapin, page 524, swears that he had a will proved, the will of his father, and paid $10 to Judge Prindle. Mr. Ray did the work, although he swears he did not employ him, but that he did the business with Judge Prindle.

Ray contradicts him in some particulars, at page 777. Mrs. Hadlock, at page 376, swears distinctly that she paid $45 to Judge Prindle himself, and $130 to Wescott, the executor; also, that she never consulted with Ray, at page 377. Ray, himself, at page 780, flatly contradicts her in several particulars. Again, Bradley F. Gregory, at pages 437 and 441, swears he paid Judge Prindle $25 for the proof of the will of Almond Trask; that he did not employ Mr. Ray in the case to his knowledge. Mr. Ray, on the contrary, says he was employed by Mr. Gregory, and that Gregory perfectly understood it, for he informed him that he would charge him as an attorney, for his services.

Luther Brown, at page 517, testifies that he paid Judge Prindle $10 for the proof of a will; he asked Prindle to attend to it and the judge ordered Ray to do it, and he supposed Ray was doing it for Judge Prindle, and he did not employ Ray. He says he asked for a receipt for the $10 of the judge, and he told Ray to give it. This Ray entirely contradicts, and swears he was paid the $10 by Brown, and Prindle was not in the office. (Page 773.) Again, at page 810, he assumes to say that Mr. Brown swore he had Judge Prindle's receipt, and was positive, whereas Mr. Brown had not sworn to

any such thing. John Mitchell, at page 433 swears he had a will proved before Judge Prindle, and that Mr. Ray drew the papers at Judge Prindle's request; also that the judge asked him for his fees, which, he says, were $35, and he paid it, and asked twice for a receipt, which he did not get. He says Judge Prindle was the one he talked with and employed. Mr. Ray swears, on the contrary, that Judge Prindle was not present when he drew the petition, and that Mitchell did the talking and employed him (Ray) to do this writing. (Pages 778 and 812.) Now, here is Ray contradicted by eleven or twelve witnesses point blank upon this question of such material vitality to this case as to what, in fact, took place at the surrogate's office upon an occasion when money was paid by each one of these individuals; contradicted, I say, by these eleven men, totally unimpeached and unimpeachable, without the least motive for prevaricating or stretching the truth in any manner; contradicted fully and in every point. I know that witnesses are to be weighed, not numbered; but, taken under either circumstances, weigh them or number them, and you will find that the scale in which George W. Ray is kicks the beam every time. He is, under these circumstances, but as dust in the balance; amounts to nothing, *is* nothing, and will remain nothing. What is the result of this? You find that it is proved that Ray acted as clerk to this respondent. You find also that he says he never received $1 of compensation from this respondent for those services; never received $1 of the money allowed by the county for clerk hire. But I shall show that he did receive compensation in another and a disgraceful and corrupt way. What was it? He received his compensation as clerk for performing those clerical duties by *having the patronage of the office of surrogate farmed* out to him; by the unclean drippings from the altar of justice, presided over by Horace G. Prindle; and in that way he received his compensation, and in that way alone. *He* says he had his office rent free; he had his fire free; he had his lights free, and performed those services for Horace G. Prindle that I have detailed, and Prindle never paid him a cent. How was he paid then? Did he do all this for nothing? Did he do it all voluntarily, as he would have you believe? Or did he act in that respect as any other man would act, as to whether he was to be paid for services actually performed? He was paid, I say, by these drippings from the altar of justice presided over by this man. He was paid by that patronage of the office which was corruptly and illegally farmed out to him, as this evidence shows beyond all question or shadow of con-

tradiction. Now, look at it for a moment. Here is this judge who received a certain sum from the county designated as clerk hire. There is no proof whatever that he paid out one shilling of that money to any human being for doing that work in that office —

Mr. E. H. PRINDLE — You are mistaken about that.

Mr. PECKHAM — No, sir; I am not mistaken.

Senator TIEMANN — It is proved that he paid Ray something.

Mr. E. H. PRINDLE — It is proved that he paid a woman a considerable amount.

Mr. PECKHAM — That is the whole thing — a family matter. I say there is no proof that this man spent $1 of this money that he received for clerk hire. If there is, it is of the slightest character — small in amount and few in times. Now, Ray, in fact, does this work, and what is the result? The result is that Prindle gets this clerical work done for nothing; Ray gets his office, his fires, his lights and stationery free; he pays no rent; he does this clerical work, and, in return, as a payment for that work thus done, he gets his office rent, fire, lights and stationery, and Judge Prindle turns around and refers everybody to him that he can; and when a man comes in for the purpose of having work performed by the surrogate, the surrogate, without the knowledge and without the consent of the party, turns over the work, has it actually done by Ray, and then, in the settlement of the accounts, Ray's charges are there, allowed, taxed and ordered paid by Horace G. Prindle. There, I say, you see this beautiful system at work in the surrogate's office, as practiced by this respondent. Is this Senate prepared to say, as matter of fact and matter of law, that conduct such as this is proper, is appropriate, is legitimate? Is it prepared to dismiss from this accusation Horace G. Prindle, with the mark of senatorial approbation of such conduct, and tell him to go back to the county of Chenango and continue, as he has heretofore done, that noble work of raising up such worthy young men as George W. Ray to the practice of the law in an illegal and corrupt way? Now, whether this agreement existed as a direct contract made between these two or whether, from the facts as they took place, such an arrangement was the actual result, was, in fact, the direct and necessary result of those actions, is a matter of entire indifference and perfectly immaterial. It is disgraceful, degrading, illegal and corrupt, in whatever aspect it may be viewed; view it as you please, either as a direct agreement to pay Ray out of this patronage, or as the necessary result of a course of conduct practiced by each, the conclusion is the same; the clerical work is performed by Ray; the

clerical salary is pocketed by Prindle; the compensation to Ray for that work is eked out of the different estates which were before this respondent for administration. There is no escape from it, gentlemen. There it stands in characters of living light to-day. There in that record, as undying as this provision of the Constitution under which you are considering this case, and there it will remain as long as the Constitution itself exists.

Now, senators, this respondent has been, beyond all question or controversy, proved guilty of these actions by numerous honest and upright witnesses, and you are to decide as to his guilt or innocence, and upon you will rest the responsibility and not anywhere else. I say these facts, thus proved beyond contradiction, prove the truth of several of the articles charged against this respondent, which it will be unnecessary further to allude to than by their numbers. I allude to charges two, twenty-three, twenty-six, twenty-nine, thirty, thirty-one, forty, forty-one, fifty-two and fifty-three, and they also prove the truth of other charges, that this money was either taken, illegally and unlawfully, by Prindle himself, or else in pursuance of that tacit understanding which I have spoken of, and paid over to Ray as compensation for the clerical work which he had performed for the respondent. The other charges to which I thus allude are nineteen, twenty-one, twenty-two, twenty-four, twenty-five, thirty-two, thirty-three, thirty-four, thirty-five, thirty-seven, thirty-nine, forty-three and forty-six. These remarks, I say, cover all these charges, but one of which I wish to allude to, and that is charge number fifty-two. This is the case of the estate of Leonard Bowdish. The widow, by the will of her husband, was given, for her life, certain property, and after her death that property was to go to certain heirs specified in the will; nephews, I believe, of the testator. The wife was made the executrix, and to continue as such until, from disease, she became physically incapable of performing the duties. These parties (the heirs) came from Connecticut and different States where they were residing, as soon as they heard of their uncle's death, to see what provision had been made for them, and one Charles G. Bowdish, a Methodist minister, and a nephew of the testator, I believe, insisting that he understood that the widow claimed her husband, at his death, was a resident of the State of Ohio, and that she was going to remove there and retain all the property herself, in her own right, and there to have the estate administered, takes proceedings to compel the probate of the will, and such proceedings are had that finally the will is proved, and letters are issued to this Mrs. Bowdish. Now, bear in mind, she has

the right to the use of every dollar of that property during her life, and yet see the course of proceeding in this surrogate's office. Ray, acting under the retainer of Charles G. Bowdish, performs different services, and brings in a bill which he procures to be taxed by this respondent, and the respondent orders this widow to pay that amount. She did not know any thing about the business, and the amount is paid by her under the supposition that it is right, and the proper thing to be done, and necessary to be done in order to go on with the administration of the estate. Just look at that bill a moment. Here is a bill presented to the surrogate in regard to which I charge that almost every individual item of it is an outrage, and was known to be an outrage by this respondent at the time he taxed it. What right had Charles G. Bowdish to come in here and be paid for his expenses in coming up to attend the funeral of his uncle; in coming up to attend the proceedings taken by him for the purpose of having that will proved? What right had George W. Ray, as his counsel, to charge a counsel fee for different services performed by him, and have that taxed in this bill and paid by this widow? What right had Mr. Ray to charge for his traveling expenses, going down here and there, riding up and down through the country at large to find out these different heirs, and make service of these citations upon them? You look in vain for the least shadow of authority, satisfactory or otherwise? If these proceedings had been taken by the executor named in the will, he would have been (as was said by the counsel on the other side, and which I do not deny) personally liable to the persons that he employed as counsel, or as attorney; and when the executor came to the final settlement of his accounts, the amount paid by him for the services of an attorney and other proper expenses of administering the estate, would be put in the bill and sworn to, the items given, and passed upon by the surrogate, on that occasion of the final accounting. But not one solitary word of authority is found, satisfactory or otherwise, for the taxation of this bill in favor of a party who was not the executor, who had nothing whatever to do with the administration of the estate any more than I had; and who assumes to be paid his traveling expenses incurred in proceedings commenced by himself and for which there can be no pretense the estate was at all liable. He makes the business of attending the funeral of his uncle, and the occasion of taking these proceedings, an occasion for profit to himself, or, at least, an occasion to take away any expense that he may have incurred in attending upon the funeral of that uncle. He unites business with pleasure, which proves the reverend

parson to have been possessed of a thrifty and a frugal mind. Goes to the funeral and charges for the expense of it? And that item, thus put in, is taxed by this respondent as a right and proper item? I say every one of those items was an outrage. Mr. Horace G. Prindle had no right to act as the almoner of the estate of this deceased party, or to take away *one solitary cent* of the property of this woman and give it to this man, or to his attorney. But they say the heirs were all satisfied. Yes! The heirs, that is, those other nephews, said they would be satisfied with whatever arrangement Mr. Charles Bowdish would make, and yet there is no word of proof that these heirs knew one word as to the amount that was paid this man, or that his traveling expenses in attending the funeral were paid from the estate. And even he swears himself that he don't think they did. But there is no proof that the widow knew the charge was illegal, and was yet satisfied to pay it! So here is the bill, taxed by this gentleman, every item of which was an outrage, and which he had no legal right to tax, and the absence of that legal right he was well aware of. Mrs. Bowdish, a widow, ignorant of law, is ordered by this respondent to pay this bill, which he knows is illegal, to Mr. Ray, as attorney for Charles Bowdish, and in obedience to that order she does pay it. Is not such a man a fit occupant of the surrogate's office? Shall such conduct receive the official approbation of this Senate? Now, I will take up this charge in relation to the Barrows' estate. What was that? Here in the first place you will find an estate left by a testator not to exceed in value some $3,000. You find that he bequeathed certain legacies to certain corporations or charities, as my friend calls them. There is not enough personal property to pay those legacies. The executor of the will goes to the surrogate to have the will proved; the surrogate tells him there is no power in this will given to the executor to sell this estate; you will have to apply to the Supreme Court for permission to sell it. What did the executor say? Well, whatever is right to be done here, I want done; one of the heirs to this property is not very well satisfied, and I must go strictly by the law, and whatever is necessary to be done it must be done; and he inquires into the amount of expense that will be necessarily incurred in that performance. The surrogate tells him bringing suits in the Supreme Court is pretty expensive business; it may cost him a hundred dollars. Well, says the executor, whatever is necessary go on and do. Under that retainer he goes on and commences an action for the purpose of asking the leave of the Supreme Court to sell this real estate to pay the legacies, any

lawyer would think that was a pretty simple case; one that dld not require any vast deal of research, or any vast deal of legal ability to successfully carry to an issue. Here is the complaint at page 360. It was a simple complaint setting out the will; the fact that the man is dead; the fact as to the amount of personal property; as to the real estate; describes the real estate; says there is not sufficient personal property to pay these legacies, and then asks that the real estate may be sold for the purpose of paying these different legacies; and that the executor distribute the proceeds of said will, after deducting the costs and expenses of this action, to the legatees under said will. George W. Ray is now put forward as the attorney for the defendants and he procured their authority, under which he appears as defendant's attorney and simply puts in the following answer, a model of legal learning. Something that must have taken him days to concoct. Let me read it:

[TITLE OF THE CAUSE.]

"The defendants above named answer the complaint of the plaintiff in the above action, and admit that the same is true, and each and every allegation therein contained, and these defendants hereby consent that the plaintiff have the relief and judgment demanded in said complaint."

That was the high and responsible position occupied by Mr. George W. Ray. He comes in and gracefully makes his bow and says, take what the complaint asks, which we admit to be true; and I admit there was great legal learning there, or, as Capt. Cuttle said of Jack Bunsbee's opinion, there were "solid chunks of wisdom." It must have taken him days and weeks and the burning of midnight oil to have got the necessary legal learning to have drawn up that magnificent specimen of a pleading. Then what is done? They stipulate that this action be heard at the circuit and special term of the Supreme Court, and that the plaintiff have judgment for the relief demanded in the complaint. Another occasion for the use of the great and exhaustive legal learning of this profound jurist. Under that stipulation, he goes to the circuit and obtains an order, and what is that order? That order is found at page 366, precisely in accordance with the terms of the complaint, except it adds, "that out of the proceeds of said sale, the said plaintiff, as such executor aforesaid, pay the costs, charges and expenses of this suit and of said sale; the whole of which is not to exceed the sum of $350." And then, when he draws the judgment, he forgets to put in that judgment, "the whole of which is not to exceed," and directs the payment of $350. Such sum shall be paid, that exact sum, and

the balance, after paying this money, will be distributed, etc. Here is an action involving less than $1,000, or about that sum; a default taken and judgment had by stipulation, and the costs are $350. Now, what language is fit to characterize this transaction? I feel myself unable to fitly characterize it. In the first place, we find this man acting as surrogate, accepting a retainer not thrust upon him; for you will see, by the testimony of the executor himself, that it is almost in the nature of a grabbing out on the part of the respondent to get hold of the case as attorney. We find him in that way violating a statute passed in regard to just such a case. It absolutely prohibited him from acting in such a capacity in a case where the executor for whom, or against whom he acted as counsel had to have his accounts audited by this surrogate. He pleads ignorance of that law; I will come to that in a moment. He starts out then with a violation of the statute. He starts out as the violator of a statute plain, unambiguous and certain in its meaning, and he then comes to the Supreme Court and, as the proof shows, commits a gross fraud upon the court by the entry of an order in the terms that order is entered in. Judge Boardman was placed on the stand here, and he was asked if he had any recollection of any order of that kind ever having been granted by him, and he said he had none. He was asked if it was his practice ever to look at or to question the contents of an order which was assumed to be drawn up in pursuance of a stipulation to that effect. He said "I do not; it is not my custom or habit to take any notice whatever of the contents of an order where the party applying for it says it is by virtue of a stipulation signed by the attorney for both parties, where both parties are of age." He goes further and says, "not only do I so judge, on account of my uniform habit, but when I look at this order now I come to the same conclusion from an inspection of its contents, for I regard it as an unfit and improper order, and one which if my attention had ever been called to it, or I had known of its contents, I never should have granted. Why? Because the costs therein granted are, in my judgment, not allowable by any law or any statute in this State." Therefore you find this man who is gracing and adorning the bench of Chenango county, going to a special term of the Supreme Court and taking an order *by virtue of a stipulation*, where the stipulation itself don't give him that right, and where the attention of the judge is never called to its contents and from the contents of the order itself as now shown him, the judge says, I am sure I never should have granted such an order, if my attention had been called to it. Now, as matter of fact, was his attention

called to it? The judge says not; from his uniform course he says not; from the contents of the order he says not. Horace G. Prindle was called upon that stand. Bear in mind, gentlemen, this charge is not one of those which the counsel might speak of as "the different small *minutiæ* of the case." The counsel alluded to it in his remarks, here, as one of the important charges in this list of charges, so that Judge Prindle, when he failed to make any explanation of his conduct herein, when on the stand and engaged in explanations generally, failed, not on account of inadvertence, not on account of his attention not being upon this charge, but he failed to explain because he could not. Because he *dared not swear* that the attention of Judge Boardman was ever brought to that question of costs at all. Never! If that order had, in fact, been granted by the approval and with the knowledge of Judge Boardman; if his attention had been called to that fact by Judge Prindle, at that term, would not he have stated it, when on that stand, advised and guided as he was by three able and astute counsel, and himself a lawyer of years' standing? Three counsel, here, who knew that that was one of the important charges contained in this case. One of the chief charges made, that that order was obtained under such circumstances as to make it a legal fraud upon the court, if I say, the fact were true, that he *had called* the attention of the court to that order; if the court itself, in making that order, had known what its contents were, *would not Judge Prindle, on that stand there, have so testified to you, gentlemen, and let it be known whether in fact he did do that or not?* No question about it! It was only because in honest truth he could not. It was only because if he thus stated, he would be swearing to what was unquestionably false, that he failed to make any remark, failed to throw any light whatever upon that question, and left it without one word of comment or explanation. Why, gentlemen, the law in this State, and it is natural common sense that will be approved by every man of intelligence enough to know what law ought to be, in some cases, it is the law in this State that where a party has it in his power to produce evidence which if given might tend to his benefit, and he fails to do it, every presumption is against him, and it is presumed that the evidence, if produced, would injure instead of benefit him. This was decided substantially in the case of *The People* v. *Gordon*, 33 N. Y. 501, and it is common sense. If this man had obtained that order by giving to Judge Boardman notice of its contents—if Judge Boardman, with notice of those contents, had said that is the proper order, and the costs in this case are legal costs, Judge Prindle would have been the first on that stand, and in his testimony would have said, I obtained

that order, it is true, but I obtained it from Judge Boardman, himself, who knew the facts and the contents to which he assented. No, sir. There was the fraud! No such assent was ever in fact obtained. Ah, but says the counsel, learned in the law, he was acting as a counselor and not as a judge; you cannot touch him for that business, fraud though it is; you must let him alone. Is this Senate prepared to agree to any such monstrous doctrine? That a man under such circumstances, acting the part of a common cheat, guilty of conduct that would richly merit his being disbarred, is to escape the penalty for such misconduct, because forsooth it was done, not in his official capacity, but in his capacity as an attorney and counselor at law? Is it possible that this Senate is prepared to say that a man guilty of such an act — a man guilty of an act which richly merits his being thrown over the bar, is to receive the indorsement of this Senate as a fit and proper man to occupy the high position of the chief judicial officer of the county of Chenango? If you do, as I said before, gentlemen, the responsibility is with you. Now, what comes? Having obtained that order by fraud; having violated the statute, in the first place, in order to act as attorney, he comes back, and the very first thing he does is to write to this man "sign this deed and send me the money." *Send me the money!* Having procured that order by fraud, he obtains the money by virtue of the same fraudulent order, for the executor paid that money pursuant to its provisions, and put the amount of such payment in his accounts, and, then, Horace G. Prindle steps forth clothed in his judicial ermine, sitting there as an officer of justice, and passes upon that account as a proper payment made by the executor to Horace G. Prindle as counselor at law. Horace G. Prindle as surrogate passes upon an account of an executor who has paid that account under an order fraudulently procured by Horace G. Prindle as counselor at law; and then the same Prindle passes upon that account in his own favor. Prindle the surrogate passes upon the account of Prindle the lawyer! Can any thing be more degrading? Can any thing be more utterly disgraceful? Can any thing quicker soil the purity of the judicial ermine than for the Senate of the State of New York, under these circumstances, with this proof uncontradicted, to decide that, notwithstanding this man appears in characters black as midnight; notwithstanding he appears here as a man who procures an order by fraud, and passes upon the accounts of an executor who pays the money himself under that order; yet, he is a fit and proper man to hold, and continue to hold the office of county judge and surrogate of Chenango county for the following six years? What a high

sense of official responsibility will attach to other judges when they see such conduct as this not only fail to receive the condemnation of this high tribunal, but absolutely and in effect its approbation. This excuse in regard to his being ignorant of the law is no excuse, as was aptly read to you by my associate in his summing up here the other day, from the remarks of Senator Gibson, one of the most distinguished and honorable gentlemen who occupied the position of a member of the Senate upon the trial of Judge Smith. Ignorance of the law is no excuse. He is bound to know the law. He says Judge Boardman did not know the law. Judge Boardman was not surrogate, and he was not bound to know the law upon that point, unless Judge Boardman should violate it; and if Judge Boardman should violate the law, then he would have been amenable to its provisions, and his ignorance would be no excuse. He violated no law (Judge Boardman) when these parties, the surrogates, if ever there was such another instance, practiced before him as attorney and counselor for executors over whose accounts the surrogates had control. The statute was aimed at the surrogates, not at the Supreme Court. The statute was aimed at these men to prevent their doing that business. It didn't read that the Supreme Court shall prevent such illegal actions; it read that no surrogate shall perform this duty; no surrogate shall thus act, and it was the bounden duty of this surrogate to know that this law existed; that it was in plain, unmistakable characters in the beginning of that book, which is the *alpha* and *omega* to surrogates in this State, "Dayton on Surrogates," and yet he says he is ignorant of the law. But, admit that he was ignorant of the law, yet a man who was fit to act in the capacity of judge of a county court would naturally refuse to occupy such a position as this man sought to, and, in fact, did occupy in this case. Why, what is the reason of it? A man, when he takes a suit as attorney or counsel for or against an executor, when as surrogate he has jurisdiction over his accounts, knows perfectly well that he is to pass upon those accounts in his judicial capacity; and common decency, common intelligence, common integrity, would admonish him to refuse to occupy such a position: He would say I refuse to act as an attorney or counsel for or against any executor over whose accounts I must necessarily have jurisdiction, and upon whose final accounting I must necessarily pass upon the question of the amount and propriety of payment made to me by this very man. I say it don't require a statute! The merest dictates of common integrity would at once suggest the absolute, unalterable impropriety of any man, under such circumstances, assuming to act as an attorney or

counsel and charge for his services, and then as surrogate audit that account; as judge in his own case. But the counsel says it don't appear that he did this corruptly! How is corruption to be proved but by surrounding circumstances in ninety-nine cases out of a hundred; how can you show it but by proof of the circumstances surrounding the action itself, and from which, as common, ordinary, honest, intelligent men, you are to judge, as matter of fact, whether that action was or was not in itself corrupt, unlawful and illegal? You prove it in that way and no other. Is there any doubt, from the proof on this question, as to a corrupt intent existing; do not these charges show beyond all question the utter and entire unfitness of this man to act as a judicial officer upon the bench of that county, whose inhabitants he has by his conduct disgraced and degraded; does this Senate uphold such action; are you prepared to stamp with the stamp of your judicial sanction the conduct of a man in obtaining an order by corrupt, illegal and fraudulent means, in procuring an executor to pay him the amount mentioned in the order obtained under these circumstances; and then, as surrogate, passing upon the accounts of that executor? Never will I believe that you can come to this conclusion until I see it written in conclusive characters in the record of this Senate. But, take one other charge; take the seventeenth, the case of Mrs. Esther Russell. Now, the learned counsel on the other side, when he addressed the Senate upon this subject, assumed to treat the conduct and the testimony of this woman with marked levity and with great (as he supposed) humor and wit. I confess it rather smote upon my feelings; it jarred upon my ideas of propriety, to make the charge in this case, as proved by this testimony, one of levity and laughter, or an opportunity for the display of wit and humor. What is the fact? You find this woman sixty-eight years old, a widow; she comes to the surrogate's office for the purpose of having the will of her husband proved. I don't care whether she was married to a second husband in five days or in five minutes after that transaction occurred. The question will be in regard to what the transaction itself was at that particular time. She has a little estate left her by her husband; she has a few hundred dollars in United States bonds, and she brings those bonds with her, her grandson accompanying her to the office of this surrogate upon the occasion when this will was proved. She goes in there, and this business is transacted, and the will proved. You will notice what great stress was laid upon the fact, as made by the learned counsel for the respondent, to impress upon the minds of senators that this judicial

proceeding had actually closed before the transaction in question commenced. He wants to show that the papers had been written; that all the legal and technical formality necessary for the proof of the will had been gone through with; that the judicial part of the performance had closed; that justice had descended from its bench; and that then was a fitting opportunity for greed to stand in its place and assume the general features and perform the same role that appertains to the Shylocks all over the world. I will allow him the benefit of that argument. I care nothing whatever whether in fact the legal, technical formalities of that occasion had been gone through with. It matters not, in my view of this case, whether the last "t" had been crossed, and the last "i" dotted, and the last seal placed upon the document, and the document itself duly delivered into the hands of this woman. I say I care not if all those formalities had been concluded, at the time when this transaction itself took place. Look what it was; look upon the occasion; look upon the circumstances as they actually did transpire, and then tell me, gentlemen, whether that is a fit and proper and honest transaction? While this old lady was there with her grandson for the purpose of having that will proved; when the legal and technical formalities necessary for that purpose had been gone through with; while the judicial atmosphere was still around her; while Horace G. Prindle was still occupying before her eyes the position of her superior (as she says), clothed with the judicial ermine, with the very atmosphere of justice still upon him and still surrounding him, as the surrogate, the great store-house (as this poor woman expresses it) of learning and of knowledge, sufficient for herself and all other widows; there, and under these circumstances, at that time, this man cooly and calmly cheats her out of one hundred and forty odd dollars. That was done by Prindle as the individual, they cry, not by Prindle as the judge. Prindle as the individual and Prindle as the judge are one and the same man. Prindle as the individual cannot be unfit or immoral, and Prindle, at the same time, be an honest and upright judge, a man of judicial integrity; the two things are incompatible, as far apart as the north is from the south, as antagonistic as fire is to water. But, says Mr. Prindle, I never took that money from her without her knowing that those bonds were at a premium; I told her that the bonds were at a premium, but she wanted them that day. Now, she denies that; and, upon the question of who should be believed, Mrs. Russell or Horace G. Prindle, I think that this Senate will take the version of Mrs. Russell; she denies that he ever told the bonds were at a premium; she says that she

knew before she went there, she had understood the bonds were at a premium, but, when she went there, under the circumstances in which she was placed, she forgot about the premium; she forgot about that matter entirely; she was a little scared, being in the presence of this high judicial officer, this store-house of learning; she was a little scared at this fact, and the fact of the bonds being at a premium, for the moment, and temporarily, entirely escaped her mind. This man, under these circumstances, takes that occasion to overreach her; takes that occasion, at that time, in that place, to purchase those bonds at par, when he knows there is a premium on them, although he relates now he did not know the exact amount. Why should she sell this property at less than the premium? Her grandson, it is not pretended was going west under four or five days. It is not pretended but what she could have gone right to this bank (and she says she knew it afterward), and sold these bonds, and the bank would have given her within one-half per cent of the price the bonds were selling for in New York at that time. She knew it, and yet, under these circumstances, this respondent would have you believe that this woman insisted on selling these bonds at par, and she did not want to wait. Did such a transaction ever take place in the whole course of human existence? Here is a common country woman, a woman with not an overplus of this world's goods, a woman to whom a dollar looks as large as it does to any human being on the top of the earth; she comes there, and this man tells her these bonds are at a premium! Well, I want to sell them, she says. I can't give you the premium, he replies. No matter, she rejoins, I will sell them; I will sell them to you at par. If he, in fact, had told her those bonds were at a premium, her question would immediately have been, what premium? how much? Wouldn't she naturally say so? Would she not have said, I will find out if these bonds are at a premium, I don't want to sell them for less than they are worth, if I can get these bonds at nine, eight, five, or one cent above the par value, I don't want to sell them for less. Would not she have said, cannot we find out how much this premium is; can it not be determined anywhere? But no! On this statement, he tells her these bonds were at a premium, and yet she never inquired how much, never asked him to give her the amount of that premium, and quietly, entirely satisfied, sells those bonds to this man with the knowledge, imparted to her at that time, that they were at a premium! That transaction never took place since the sun shone.

There is not an intelligent man within the sound of my voice who believes for one moment that this respondent informed Mrs. Russell that the bonds were at a premium, or that she, knowing that that premium could be had by stepping across the street, quietly, with entire satisfaction, gave to him the amount of that premium, and sold the bonds at par. It is just this story that this respondent asks you to believe. I think that shows a little of his character. It shows that, under circumstances where he is occupying the very seat of justice, surrounded by its atmosphere, and with his judicial ermine upon him, he is ready and willing to overreach and practice a low, cunning, mean fraud on a poor old woman who comes there for his judicial action upon her case, and when charged with his fraud, he says the last "t" had been crossed, the last "i" had been dotted in the formal proof of that will; I ceased, at that very instant that I placed the seal of the Surrogate's Court to that paper, to be surrogate; I descended from my position as surrogate, and as a man I had a right to this fruit of my cunning and her simplicity! He takes twelve dollars from her also (which was illegal) when she comes there to have the will proved. He don't deny that. He says he did not enter it in his cash book, therefore he don't remember that she ever paid it; thinks she did not, but won't say any thing stronger than that; and yet another time he swears that he kept no cash book of the amount of fees received during the time he held his position as surrogate. He don't think that she ever paid him this twelve dollars, because it is not entered in his cash book, and at another time swears he did not keep any cash book at all in which he entered such fees. Now you see the capacity of this man for high integrity, and honest, incorrupt conduct. Swearing to a state of facts which no man in this Senate can believe for one moment as the true and correct one, and giving as a reason why a certain sum of money was not paid him, that it was not entered in his cash book, and yet at another time swearing that he kept no cash book at all for the entry of these very fees which this payment formed a part of!

Then the next charge I come to is this of the Greene railroad. I shall not refer to that; it has been referred to already, and at length, by my colleague, in his opening, and the defense made by the other side; and I regard it as one that is proper and entirely legitimate to leave with the judgment of this Senate without any further remarks on my part. Also the next—this other railroad charge. I shall leave that, also, because I see that my time is coming to a conclusion here that I had marked out for myself,

and I do not wish to trespass upon the time of the Senate one moment unnecessarily. There is another charge in regard to the refusal to draw papers that don't appear to be denied or excused; that is, the fourth charge. The seventh is the charge proved by Mr. Murphy. I shall not refer to that, either. The Senate will have to look at these things themselves, because I see it will be utterly impossible for me to go through with the amount, even, I had intended, without trespassing more on your time than I think is proper, or than you would listen to me if you would stay here. I have no desire to trespass one moment in presenting my view of this case. But there is one other charge that I desire to refer to, and which I think it is necessary for me to refer to, seeing the counsel for the other side took up so much time in regard to it, and that is this, in relation to the fees which Judge Prindle returned, and to the manner of the return which he made.

Senator PERRY — Will you allow me to ask you a question? I understand your argument in relation to the charges which are made by this clerk — by Mr. Ray, the clerk — proceeds upon the assumption that the services which he rendered in filling up those blanks was a part of the official duty of the surrogate?

Mr. PECKHAM — Some of them were; yes, sir.

Senator PERRY — Assuming that Mr. Ray was a clerk in the surrogate's office — assuming that fact — and that the drawing of petitions and filling of blanks was a part of the official duty of the surrogate, do you still contend that the suffering of Mr. Ray, by the respondent, to draw these papers, and receive the proper charges therefor, is such an act of official corruption and malfeasance in office, on the part of the respondent, as to call for his removal from office on the part of the Senate?

Mr. PECKHAM — Unquestionably and undoubtedly. I answer to that without the least hesitation whatever. He violates, under those circumstances, the express provision of the statute which he, himself, acknowledges that he knew; a statute which prohibited the clerk of a surrogate from practicing before that surrogate at all. These matters are matters which are practiced before the surrogate. Drawing these papers is drawing papers which are to come before the surrogate for his judicial interpretation, and for his judicial action; and if, under those circumstances, acting as clerk of the surrogate, he charges these fees and performs these services, it is illegal, a corrupt, a disgraceful and a degrading exhibition of affairs.

Mr. PRINDLE — If that had been done by some person else, a lawyer, would it have been practicing?

Mr. PECKHAM — Most undoubtedly it would have been practicing if done by any person as a lawyer, or if done by the clerk of the surrogate. You cannot escape by any such technicality as that. Practicing in the court of a surrogate, or appearing there in the character of one who is doing something connected with the surrogate's court, for another person other than his own individual self, is practicing in such court; and if while a clerk, while occupying that position, he assumes to appear before the surrogate in the place and stead of other persons, upon matters that are legitimately brought before a surrogate as he is holding a surrogate's court, I say, that if under such circumstances he does not practice before the surrogate, nobody practices before a surrogate, and there cannot be any such thing as practicing in a surrogate's court. The surrogate, while he does these things, holds a court. He is a court, and these papers drawn up are to pass his judicial inspection, and to receive his judicial approbation or disapproval And the man that draws them up acting as clerk and receiving fees for these very services, appearing before the surrogate as the man who in fact is doing the work for this other and this third party, is practicing within the plain, palpable meaning of that statute as much as any practicing can be, and if that is not practicing, there can, as I have said, be no such thing as practicing in a surrogate's court. Now, in regard to this return that he makes to the board of supervisors. I shall look at that a little in detail. He has been selected to the office of county judge and surrogate. There is no law which compels him to hold that office for one moment. If he thinks he can make more money by practicing as an attorney and counselor in the court over which he presides, there is no statute, there is no moral obligation upon him to compel him to occupy the position of surrogate or county judge one day. He holds the position as a position of trust, for the benefit, not of himself, but of the people of Chenango county. If the salary is not sufficient, including his clerk hire and expenses, he can resign the office at once; and all this talk that a man must support his family may be very true, but, like many other abstract truths, has no bearing on this case. He is given that salary, and by law he can receive no more. What does he do? Instead of accepting the salary as granted him by this board of supervisors, and standing there honestly, as he ought to stand, taking what the law gives openly, he resorts to a series of actions as disgraceful and degrading as any that can be brought for ward in this case, or in any other upon which this Senate has passed, either as a Senate or as a court for the trial of impeachments. What did he do? The statute says he shall make a return of the fees that

he has received separately, in detail, by items, and he shall attach to that an affidavit. "They" (county officers, including a surrogate) "shall also pay over all sums so received by them for such fees and perquisites, after deducting their salaries, to the treasurers of the respective counties, on the first Monday of May and November of each year; and shall render an account giving each item of fees received, verified by their affidavits, to the board of supervisors at their annual meeting." Give each item of fees received—*each item*—and verified by affidavit. Now, what reports has he made? Why, he makes a report of certain fees in gross. He don't pretend to give items. Lumps them in gross; sends in the report of his fees with an affidavit that he has received that amount, but intentionally fails to say he has received no more, when in truth he has received much more. He makes the affidavit which he knows is no compliance with the statute, for the purpose of deceit, to impose on the ignorant or the unobservant. He has failed to comply with the statute which he knew existed. He fails to make the affidavit necessary to be made, because he cannot make it and yet retain in his pocket the money which he knows does not belong to him, but to the county of Chenango. In other words, he cheats and evades, avoids and dodges the plain provisions of the statute so entirely familiar to him, and he avoids them for the very purpose of cheating. There is no mistake about it. He makes a return which he knows is not sufficient, and is substantially untrue. Makes a return which he knows does not include the amount of fees which he actually and in fact had received, makes a return which he knows does not comply with the statute; makes an affidavit which he knows does not comply with his duty. Why? In order that he may retain money in his pocket which legally and justly belongs to the county of Chenango. Does he, in a manly way, report to the board of supervisors, "gentlemen, the salary which I am receiving is not sufficient to support my family and I ask for an increase?" If that increase could, by the statute, be legally given, there was the time and place to ask it. He should apply in a manly, bold, honest manner to that board, which has the authority, if the authority rests anywhere, to grant that increase of salary. He should state that the salary is not sufficient for me to live upon; it is not sufficient for me to support my family by, and I desire to hold this position; to discharge its duties honestly and uprightly, with strict integrity and perfect uprightness, and in order to do it, the duties are such that it requires me to devote my whole time to it; I ask an increase of salary. If it be said that the statute stood in the way and prevented that increase, then it

also stood in the way to prevent a surreptitious and fraudulent increase. If the statute, while he was in office, prohibited the increase of that salary, ten times more did it prohibit the increase by virtue of this fraudulent method of retaining money not legally or justly his. What is his defense to this? Is there any plea that he is not guilty of it? Is there any plea that the proof does not come up with the charge as made? None whatever. The proof is unquestioned and unquestionable, and the defense is that these things were talked over by some of the members of the board of supervisors, and it was understood that he, Prindle, was to put in his affidavit and make his return in that way, and that he was to keep back certain fees (no amount being stated) for the purpose of paying his office and incidental expenses, *and so forth*. There is great virtue in an "and so forth," gentlemen. It will cover 'most any thing. You will always find any particularly objectionable item or subject-matter that ought not to see the light, and that a man will take all manner of ways that he can find for hiding; you will always find such matters conveniently concealed under an "and so forth." And so it is here. What are the other expenses of the respondent included in that "and so forth," which he retains money to pay? No one knows; no one can know. Suppose this defense to be allowed; what is the effect upon the morals and the habits of other judges, supervisors, and inferior officers throughout the State? Here is a statute, gentlemen, not allowing the board of supervisors, in their discretion, to dispense with its provisions. The statute nowhere allows the board of supervisors to say we will dispense with this report or with a proper affidavit; we will not exact it of you. You need not return all the fees you receive. That was a matter which the statute did not leave in the discretion of the board of supervisors. The board of supervisors had no control over it. It was a statutory provision, mandatory in its nature, directing the surrogate to make this return in a particular way, and it was not in the discretion of the board of supervisors to allow its omission or alteration. By the plain provisions of the law, it is compulsory upon the respondent to make these returns, under oath, separately and in items. It was a provision of the statute, I say, over which the board of supervisors had no dispensing power whatever, and the respondent knew it! It was what the statute itself directed this respondent should do: make a report to the board of supervisors, under oath, of each separate item of fees received, and this the board had no power to relieve him from doing. He knew it. The board of supervisors knew it. Now recollect, there is no action whatever on the part of the board of

supervisors in regard to this matter. The respondent brings up here two or three witnesses, who were some of the directors in this Greene or the other railroad company, I don't know which, and at any rate were his political friends in the board of supervisors, and shows that he had an understanding with some of these individual members of that board of supervisors (not with any definite number either; not with what is known even as a majority of the board of supervisors, but with some individual members of that board) that he was to avoid this statute, and was not to be called to account for it by the board; and thus he was to retain money not honestly his own. Admit it! Admit the facts constituting this so-called defense. A more disgraceful and degrading exhibition of judicial depravity was never witnessed, and I don't believe that there is another instance on record where a party produces evidence of his guilt as reasons for his acquittal! This respondent acknowledges the charge, and claims that there was nothing wrong, nothing corrupt, nothing dishonorable, nothing illegal in it, only, as my learned opponent says, a little irregular. *Irregular! Irregular!* What is irregularity? I should call it a conspiracy on the part of this man, Horace G. Prindle, with some individual members of the board of supervisors, to violate with impunity the plain provisions of a statute whose existence he was well aware of, and whose provisions he intended to evade in order to allow him to retain more money in his pocket than belonged to him. *Irregularity!* A conspiracy to do an illegal act; a conspiracy to violate a statute with impunity, is an irregularity. Bear in mind that even this agreement is not an agreement with the board of supervisors as a board; not an understanding even, as shown by this case, with a *majority* of the members of the board, but an agreement between the respondent and some individual members (who they were and what they were is not shown in this case), that he should violate the provisions of this statute, and retain in his own hand moneys which that statute plainly stated he should pay over to the county treasurer of the county of Chenango; and that is an irregularity! That is another of these harmless peccadilloes which this respondent, even by the admission of the counsel on the other side, has constantly been guilty of!

These members of this board of supervisors were acting as trustees for the public at large; they were acting under their sworn duty to see that the laws passed in regard to these county officers, among others, were fairly and honestly fulfilled. And you find this officer — the highest judicial officer in his county — openly and

unblushingly entering into negotiations with individual trustees of this public trust, for the purpose of allowing him to violate with impunity these provisions of a statute by which he is compelled to pay over money belonging to the county, but which he desires to keep in his pocket. Does this Senate sanction that as an act which a judicial officer can be guilty of, and yet be dismissed hence from this prosecution, stamped with the senatorial approbation, as a fit and proper man to decide questions of ordinary integrity between man and man; to sit in judgment upon his brother man upon a question of fraud; to sit there as a judge, and some other person occupy the position of a criminal, when the very man that is meting out the sentence of the law is himself the guilty violator of a statute, by which he is enabled to retain money which don't belong to him, and which he knows don't belong to him? Is that the proper man to sit in judgment in the judgment seat of the county of Chenango? Is that the man which this Senate is prepared, I say, to dub with its official sanction, as a fit and proper man to discharge the high and delicate duties of surrogate of that county? Never can I believe that this Senate can come to such a conclusion upon such a state of facts. It will not sanction such a fraud, without any sort of excuse, without any sort of palliation to its disgusting, its naked deformity. This respondent occupies the position of a man who violates the plain provision of the statute, and pockets the money which he retains only by virtue of that violation. What an example it sets to these supervisors of the county of Chenango. What an example it sets to supervisors of all counties, what an example it sets for the honest discharge of public duties by other and inferior officers. Men who by virtue of their position are looking up to the conduct of the judge of their county in his official capacity, as to a man whose example they are to follow and to imitate; when they find that such a man, sitting in the highest seat of judgment in the county, enters into a conspiracy with public servants, trustees of public trusts, to violate a statute and to keep in his pocket fees which illegally are to remain there, and then receives the senatorial sanction, what an example, I say, is created for such men to follow! What an example for this Senate to set them, to dismiss the respondent with the statement, "Well done, good and faithful servant." They see a man guilty of these acts; brought here before this Senate and tried upon those charges, making no defense to this particular charge tried by the Senate with all the circumstances of dignity which surrounds this high tribunal, and dismissed with a not guilty sentence, which carries the approval of

this body upon such acts. When those inferior officers see such a termination to such a proceeding, they will say we will follow that example thus set to us. We, too, will retain, in our pockets, fees which justly belong to the county. We, too, will act the part of a conspirator with the members of this board of supervisors. We, too, will say we cannot support our families on this salary. We, too, will claim that we are entitled to a living out of our office; and we, too, will cheat, steal, lie, violate statutes with impunity, commit substantial moral perjury, and if we are brought up for the exercise of such rights, we will point, as our justification and excuse, to the action of this Senate, when Judge Prindle, guilty of exactly the same acts, was acquitted, and we will claim that not only is there no legal wrong in our action, but that it has received the unquestioned sanction of the Senate of the State of New York. Pause, senators, before that example be set; before it goes forth to the people of this State occupying official positions, that they can with impunity violate a statute whose provisions they know; that they can with impunity have an understanding, secret, not coming to the light, to evade a statute with the public servants and trustees of a public trust, and carry out the provisions of that understanding with entire safety; and that it will be approved by the Senate of the State of New York. Now, senators, I had intended to say more in this case, but I think I have said enough. At least enough has been said to recall to your minds the real character of the respondent as appears from the evidence in this case. I think you know full well what the proof is. You know what is contained in these charges. You see what these charges make out this man to be. The excuse he gives is he won't do so again. He says, by his counsel, I will never again be guilty of these actions which have been complained of. There is no danger that I will again commit them if I now escape their just consequences. Why, there may not be much danger that if Foster were acquitted he would again commit the crime of murder. There may be no danger, or perhaps would have been no danger, that John H. McCunn would have again committed the same kind of acts for which he was brought before this tribunal, adjudged guilty and removed from office. It may be that there would have been no danger that George G. Barnard (whom you have, by your verdict of dismissal, not only removed but perpetually restrained from ever holding any office of public trust or profit hereafter), I say it may be that there would have been no danger that he would have again committed the same kind of acts which by your righteous sentence you have forever pre-

cluded him from committing. But your action is not invoked here for the purpose of merely punishing this man. The healthful force of an example is asked. He is pursued with no rancorous desire. There is no conspiracy, as is alleged by the gentleman on the other side, to hound him out of office. The conspiracy existed simply in the brain of the counsel, while he was summing up this case before you. But one example of the just punishment of such an offender as this respondent is of more service in the purification of official life than a hundred statutes. There are statutes enough now. An honest, a rigorous enforcement of one of them, is of more value than the enactment of many.

These charges are prepared and presented by men in the county of Chenango, who stand in the very front rank of its honest, its upright, its intelligent and its wealthy citizens; and they are brought here, by virtue of the request of a majority of the board of supervisors of the county of Chenango itself. These men come here to you, not for the purpose of having you mete out punishment or degradation in any tyrannical, persecuting or revengeful spirit, but they come here that they may obtain relief from this intolerable evil of an unjust, a dishonest and a disgraceful judge occupying the highest seat on the judicial bench in their county. They come here to be relieved from the incubus of such a man as this evidence shows the respondent to be. They come here to ask you to exercise the power which this Constitution has placed in your hands, and relieve them from a judge who will enter into a conspiracy with public servants for the purpose of violating a statute; who will retain money not his own by virtue of such violation; who will be guilty of a fraud upon the court for the purpose of exacting costs in a case where he is the attorney for the executor, over whose accounts he has exclusive jurisdiction, and in which he, in fact, audited and allowed his own fraudulent claim. They ask you to remove from among them a man who is a judge in his own case, and who farms out in a disgraceful and degrading manner the high interests of this Surrogate's Court of the county of Chenango. They come to you and ask for deliverance from such a judge, and when the learned gentleman talks to you about the respondent having received the sanction and approval of his constituents in this late election, it is nothing more than the same statement that has been advanced to you, in the case of George G. Barnard. The last time he was elected to office, he was elected almost unanimously, I might say, and there he stood, a representative and embodiment of the vast majority of the legal

voters of the city of New York; but when the people of the State of New York came up and demanded at your hands justice; when the outraged public sentiment asked from you that the judgment seat should no longer be contaminated or disgraced by a man guilty of the actions that Judge Barnard had been proven to be guilty of; was it regarded by you for one moment, as a defense, that he had received the approval of the people, after a good many of these actions that were charged against him were committed? No, senators, you listened not to that plea for one moment, but, in the discharge of a high and solemn, yet unpleasant duty, you acted as men conscious of the responsibility under which you rested, to God, to your constituents, to the people of the State of New York and to justice itself. You degraded that man thus guilty of those crimes from the judgment seat which he himself had degraded and disgraced, notwithstanding the fact that he had received the indorsement of the people of the first judicial district, since the commission of very many actions for which you, in your judgment, deemed him unworthy to occupy the bench. How is it with this respondent? These charges were made public in the political campaign of last year — in a county where the rest of his ticket received seventeen hundred odd majority and he received between two and three hundred only, and yet he comes here and talks through his counsel of the indorsement which he has had from the people of Chenango. *Indorsement!* The less said about such an indorsement the better! Senators, in your conduct and in the manner in which you have discharged your duties in the cases of these accused judges, so far you have won an enviable reputation throughout the State of New York; yes, wherever honest jurisprudence is mentioned, or the records of it become known, you have, by virtue of the judgments which you have pronounced in these other cases, achieved a character for impartiality, and for the stern administration of justice, which has been of the very greatest service throughout the length and breadth of this whole great State. Men breathe freer to-day than they did one year ago. Men feel that the incubus of these dishonest judges hanging over them, as they had been for the last few years, have in great measure been removed; and they feel to-day a degree of confidence in your integrity, a degree of confidence in the administration of justice throughout this State, which they could not have felt but for the action which you have taken in these very cases. It has exerted, I say, a healthful influence throughout the length and breadth of this State. These are matters which are known to the community; which are apparent to every-

body here. It is, of course, known that while you dealt out this justice, as there can be no question that you did, even the mouth of clamor itself was stopped, when it was found that these very men, thus declared guilty, were declared guilty by the unanimous vote of the Senate and the Court of Appeals, by the vote of political friends as well as political foes; and in that way the character of this Senate has been greatly raised in the public estimation, and confidence has been placed in its integrity and in its desire to do honest, abstract justice between man and man. We ask for no verdict of conviction against this respondent, if he is not guilty of the offenses charged. We ask for no vindictive punishment to be meted out to him, but we do ask that if the Senate comes to the conclusion that the charges, or any of them, which I have commented upon in my few remarks this morning, are substantiated by the evidence — and I ask them to look in vain for any contradiction upon that subject — we do ask them, if they find that such charges are proved, that the sword of justice may fall with just as unerring fatality upon the head of a political friend as it did upon the head of a political foe. We understand perfectly well the position which this respondent occupies. A man of prominence in the party to which the majority of this Senate belong; he is defended here by his cousin, a member of Congress and a member of the same political faith; but we have that confidence in this Senate; we have that confidence in the gentlemen who compose this Senate, that they will forget the fact that this offender is a member of their own political family, and that they will allow the course of justice to flow on uninterruptedly, although it takes a political friend in its course and covers him with a just but degrading punishment. I say, gentlemen, we ask for no vindictive judgment against this man; we come here with no revengeful feelings to gratify, but we come here in the name and by virtue of the power of the people of Chenango county; we come here in the name of the people of the State of New York; we come here in the name of justice which has been outraged and degraded in every form, almost, that justice is capable of being disgraced by this respondent now occupying the position of judge. And we ask you to deal out upon him simple, sole, unquestionable justice. Do this, senators; sympathize with the man; deal with him tenderly and carefully, charitably as possible; but, when you come to the criminal, deal with him upon questions of simple, sole, abstract justice. With that the people of the State will be satisfied; your own consciences will be clear, and this record which is now made, will be completed in a manner that you

will not blush to allow your children and your children's children to look at in years that are to come. Make up that record so that in future years neither yourselves, your descendants nor the public, will have just ground to claim that it is not the record of an honest decision made in the cause and for the purposes of public justice.

Senator BOWEN — Mr. President: I move the Senate now go into executive session.

The question was submitted by the PRESIDENT; it was declared carried.

Upon the re-opening of the doors, a motion was made to adjourn, which was carried.

The PRESIDENT announced that the Senate stood adjourned to Monday, December 2, 1872, at four o'clock, P. M.

IN SENATE — *January 8th*, 1873.

Senator LEWIS — Mr. President: I move that we now take up and consider the case of Judge Prindle. That matter is going to occupy a considerable time, and while the hour of its consideration was fixed at three o'clock, I do not see any reason why we should have to take a recess until that hour; hence I move we now take up and consider the case of Judge Prindle.

Senator BENEDICT — Mr. President: Perhaps before the time appointed, several senators may arrive to take part in the consideration of that case.

Senator TIEMANN — Mr. President: I would like to ask the Clerk to read the minutes as to when we resolved to take up that case.

The PRESIDENT — The Chair is informed by the Clerk that the hour was fixed at three o'clock this afternoon.

Senator BOWEN — Mr. President: If in order, I move the resolution fixing the time at three o'clock be rescinded, and that the case be taken up at this time.

Senator ROBERTSON — Mr. President: I do not see how we can do that.

Senator BOWEN — Mr. President: It seems to me we have the power. This thing is all in our own hands; it is the same Senate precisely that passed the resolution, and there can be no doubt of the power of the Senate to rescind it if it is thought best. Now, the only reason why I make the motion at this time is, there are three hours, at least, that we could occupy in the transaction of the business which, unless we take up this case now, will be frittered away without any business at all. This case has been submitted and

there are no parties to appear before us at all; no argument to be made, and the only thing remaining to be done is to take the vote. I don't see why we cannot do it now as well as to wait until three o'clock. An additional reason is, there are a great number of charges to be considered, and if we take it up we can get through with it to-day. We take it up now and to-morrow we can take up the other case.

Senator BENEDICT — Mr. President: I adhere to the opinion I expressed a moment since, that we ought not to go on with this until the senators expected this morning shall have an opportunity to be present. It is certainly an irregularity; possibly, we have the power to rescind a resolution which was passed during the last year, but it seems to me very clear that we ought not to rescind it; that the consideration of that question having been set down for three o'clock this afternoon, it should go to that time. I have myself taken upon my hands several engagements this morning, knowing we shall adjourn early, as we shall to-morrow and the next day, and shall for a long time to come; I know that myself and other senators have taken on other engagements.

The PRESIDENT — The Chair suggests that a single objection will defeat the motion.

Senator WINSLOW — Mr. President: I would like to inquire, in connection with this matter, if the respondent is willing that this matter should be taken up at this time; if he is, I hope no senator will object, as the time between this and three o'clock can be very well improved in considering these cases. If the respondent is ready, I for one think it important that we should go on with the case; if he is not, I should be opposed to it.

Senator ROBERTSON — Mr. President: I do not think that is the only objection; Senator Perry, who is a member of the Senate, knew this case was adjourned until 3 o'clock this afternoon, and he desires to be present and take part in the consideration of the case, and Senator Murphy also; I think it would be unjust to them to reconsider this resolution now.

Senator MADDEN — Mr. President: I have stayed here to-day for the purpose of taking part—

The PRESIDENT — There is no question before the Senate.

Senator BOWEN — Mr. President: I made a motion.

The PRESIDENT — That was objected to.

Senator BOWEN — Mr. President: I raise the question of order that an objection does not defeat it. I should like to have the Chair

state why an objection defeats that motion at this time. I move to reconsider the former resolution.

The PRESIDENT — This matter has been set down for hearing at 3 o'clock this afternoon; possibly, under the order of motions and resolutions, the subject might have been reached, but we have passed that and are not under that order of business; when you get under that order of business again, that matter can be considered.

Senator WINSLOW — Mr. President: May I inquire of the Chair what order of business we are under?

The PRESIDENT — We have passed through the whole calendar.

Senator BOWEN — Mr. President: I move the Senate now take up the order of business of motions and resolutions.

The question was submitted on the motion of Senator Bowen, and it was declared carried.

Senator BOWEN — Mr. President: Now I renew my motion.

Senator LEWIS — Mr. President: When I made the motion originally, to take up the case of Judge Prindle, the suggestions that were made by the senators from the fifth and ninth had not occurred to me; that Senators Perry and Murphy were absent. It seems to me that the objection has considerable weight, and it changes my views as to the propriety of taking up this case at this time.

Senator JOHNSON — Mr. President: I saw Senator Perry, last evening, in New York, and he told me that he would be here this morning, and doubtless will be here.

Senator ROBERTSON — He cannot get here until two o'clock.

Senator JOHNSON — Mr. President: It seems to me important that this resolution should be entertained by the Senate, and that we should proceed with the case and dispose of this matter against Judge Prindle, and, as the case was postponed until three o'clock, it seems to be entirely within the province of the Senate to change that by resolution, so that we can now consider the case; as to whether the respondent is willing that we should proceed with the case now, it seems to me has nothing to do with the matter at all; the case, so far as the respondent is concerned, is submitted to the Senate; it is only for the Senate to pass upon the charges, and as we have to take a vote upon each specification and charge, separately, it must necessarily consume a very large amount of time, and perhaps it will be three o'clock; I have no doubt it will be three o'clock before we shall arrive at a point when we shall be prepared to vote upon the charges; for that reason, it does not seem to me the Senate could very well dispose of these charges, in the main, and if there are any particular ones that senators feel particularly

interested in, and require a full vote of the Senate, those could be disposed of.

Senator ROBERTSON — May I ask the senator a question?

Senator JOHNSON — Certainly.

Senator ROBERTSON — My question is, whether, in your judgment, it would be fair to the senators absent, and who knew this case was not to be heard until three o'clock, to take it up in their absence, they desiring to be recorded on the subject, and if they are not recorded, is it not likely to be misconstrued by the papers and their constituents?

Senator JOHNSON — Mr. President: It is well known the Senate was to meet on the 7th of January, at three o'clock, and if senators are not here, it is the fault only of the senators, and the public business should not be delayed simply because of the absence of any one senator. It seems to me to be entirely appropriate and proper that this case should be proceeded with, and as I understand the rule as laid down in the McCunn case, every charge, no matter whether sustained or not, has got to be read by the Clerk, the ayes and noes called upon each charge, and there are some six or eight or ten of these charges that no proof was introduced in support of, and it necessarily will take up considerable time. I have no doubt we can spend a couple of hours upon these charges, leaving, if you please, every material charge until the hour of three o'clock, when senators claim absentees will be present.

Senator ROBERTSON—May I ask another question?

Senator JOHNSON—Certainly.

Senator ROBERTSON—Suppose, on the 7th of January, some senator had moved to reconsider this resolution, and that we take up the case of Judge Prindle then, would it have been fair and just toward the senators who should then be absent, including the senator from the twenty-sixth district? If not, it would not be fair now.

Senator WINSLOW—Mr. President: I am informed by the counsel for the respondent that they are willing that this case shall proceed now, in fact that they expected it would go on immediately after the opening of business this morning; that they are ready and anxious to have the matter disposed of and go on at this time. I hope there will be no further delay, or that we shall be obliged to sit around here two or three hours, when we may be disposing of this case. It will be very long, and if it is done at all to-day, will carry us along into the night.

Senator ROBERTSON—Mr. President: The senator does not seem to meet the question. The question is as to the absent senators.

Senator WINSLOW—I will ask the senator if he has any assurance that the senators will be here by three o'clock.

Senator ROBERTSON—Has the senator himself any assurance on that point?

Senator MADDEN—Mr. President: I would like to be present when this vote is taken; I shall not be here to-day; I have got to be home as a matter of duty, and if the matter is considered at three o'clock, I shall have to leave and not have an opportunity of participating in it. I was not aware, until this morning, that the hour was three o'clock; I supposed it would come up in the regular order of business to-day; if it is three o'clock, I will regret it very much, as I will not be able to participate in its consideration. I have nothing to say how it should be decided, but I do not wish to be accused of not endeavoring to do my duty, and yet I have a duty at home as well as here.

Senator BENEDICT—Mr. President: I am surprised that such a motion should be sprung upon the Senate to-day. The order of business, upon so important a matter as this and such a matter as this, when senators rise in their places and speak of wasting away the time to-day as though that was some extraordinary thing, they surprise me, because every one of them know for a fortnight they are to be wasting every day in that way. There is time enough; sessions will be short until the committees get in operation, and this is a matter in which the Senate should be full. As has been before said, the Senate is far from full this morning. If we should appoint another hour we ought to give time to have senators, who are in Albany, notified of it, at least. I think there are some twenty-two senators now here, just enough, if they all vote, to pass one of these resolutions in one shape. If they are all going to vote another way, then any number of senators are enough. I don't know how they are going to vote. It seems to me to be of an exceedingly irregular character, and that the proper course to pursue is to go on at three o'clock this afternoon, or, if not then, some other time shall be appointed that senators may know when that time is and be here in their seats. Every senator I have heard speak on the subject has expressed a desire to be present and record his vote one way or the other upon this question, because the case has dragged along a great while, and there may be a sufficient number of one view or another absent, as to decide the question, if the question is taken when they

are away. I hope the Senate will pursue the usual course and take the case up at the time which was appointed for it six weeks ago.

Senator JAMES WOOD—Mr. President: When the Senate was in extra session, under the call of the Governor, the case of Judge Prindle was up for consideration, testimony taken, and counsel heard, and the decision was postponed and made a special order for this day at three o'clock. It seems to me it is unheard of in the history of the proceedings of the Senate and Assembly, in extra session, when a time has been fixed for the hearing of a special order, that a few hours before that time arrives a motion should be made to rescind the order and fix it at an earlier hour. It seems to me it is a bad precedent to establish. There is no necessity for it, the public business does not require it. Something has been said about the dignity of the Senate. We have heard it frequently, and it seems to me that it will best comport with the dignity of the Senate to abide by its own special order, deliberately made at a time when the question was before us. I think we ought to wait until three o'clock and go on in order. For the purpose of settling this question, I move the Senate now take a recess until three o'clock.

The question was submitted on the motion of Senator James Wood, and it was carried.

Senate re-assembled at 3 o'clock, P. M.

Senator CHATFIELD—Mr. President: On behalf of Senator D. P. Wood, from the twenty-second district, who is absent, I move that this question be postponed for one week from to-day.

Senator GRAHAM—Mr. President: I was almost inclined to say that I rise in behalf of the senator from the twenty-second to request the proceedings to go on at once. I gave him notice at the time he (the senator from the twenty-fourth) made the request that I should oppose it, and he said he expected it, and he said he still desired this placed upon record, and then his wishes are gratified, I take it, for I am opposed to the postponement.

The PRESIDENT submitted the question on the motion of the senator from the twenty-fourth (Mr. Chatfield), and it was decided in the negative.

The PRESIDENT—The Clerk will now read the first charge.

Senator JOHNSON—Mr. President: I move, sir, that the consideration of these charges be postponed until to-morrow, to be taken up immediately after the disposition of the case of Judge Curtis; or

what I wish to do is, to defer it to some time, not remote, but near, when this body is more fully present than it now is; there are to-day in their seats but twenty-five senators; it takes twenty-two, as I understand it, to effect a removal. There are thirty-two members of this body; there are thirty-one acting members that may be present, that are not otherwise engaged. I saw Mr. Tweed yesterday, but he has business on hand that renders it inconvenient for him to be present upon this occasion.

Senator JAMES WOOD — Did he say that?

Senator JOHNSON — I judge so from the surrounding —

Senator JAMES WOOD — Did he say that?

Senator JOHNSON — But he looked it. Mr. President, it does seem to me as if it was making not so serious a matter of the question as the question is entitled to at the hands of this body, that they should go into a vote upon the charges requiring substantially every member present to vote in the affirmative to insure a conviction.

Senator BENEDICT — Say to-morrow at twelve o'clock. I understand the Curtis case comes on to-morrow — not until three o'clock.

Senator JOHNSON — Mr. President: I move the consideration of this case be postponed until to-morrow morning, immediately after the reading of the journal. There are twenty-five senators present.

Senator WOODIN — Twenty-six; you did not count yourself.

Senator JOHNSON — I did count myself. I believe Judge Prindle is entitled to prompt and speedy action at the hands of the Senate, but it seems to me, after the Senate has gone through the form of taking the testimony at very great length, and listened to exhaustive argument, that the State is entitled to the presence of its representatives, to whose hands this case is committed, and for that reason I move the case be postponed until to-morrow morning, after the reading of the journal.

Senator GRAHAM — Mr. President: I would have no objection to postponing for a good reason; I am satisfied that the Senate is now as full as it will be at any time we shall be able to reach this case; and, believing that we have as many present now, or will have during this discussion, as we may have at any time, to vote, I move to lay the resolution on the table.

Senator COOK — Mr. President: I will state that Senator Murphy came up on the train this afternoon, and is in the city, and probably will be here in the morning, making one more.

Senator DICKINSON — Mr. President: Senator Murphy must have been aware that we were to meet here at three o'clock for this pur-

pose, and I think it is his duty to be here. Neither Senators O'Brien, Tweed or Palmer are here. I am aware Senator Ames leaves here to-night, and we will have one less; his health will not permit his remaining longer, and certainly we will have less than we have now.

The PRESIDENT submitted the question on the motion of Senator Graham, and it was declared carried.

The question of the removal of Judge Prindle on the charges preferred against him, being under consideration, Senator JAMES WOOD arose in his place and addressed the Senate as follows:

Mr. President — On the 20th day of March, 1872, the Governor transmitted to the Senate the following message, with the charges therein referred to:

"EXECUTIVE CHAMBER,
ALBANY, *March* 20, 1872.

To the Senate:

I respectfully transmit herewith charges and specifications presented to me, alleging official misconduct on the part of Horace G. Prindle, county judge of Chenango county, with petitions accompanying the same from respectable citizens of said county, asking me to recommend the removal of said Prindle from the office of county judge and surrogate, according to section 11 of article 6 of the Constitution; and also copies of the proceedings of the board of supervisors of said county with reference to said county judge and his proposed removal from office.

I have heard the counsel for the petitioners and for the said judge, respectively, upon these charges, some of which relate to alleged official misconduct during his term of office, immediately preceding his present term, to which he was elected at the last general election, and others to alleged official misconduct during his present term. The Constitution evidently contemplates that the truth and sufficiency of the charges, in such cases as this, shall be tried by your honorable body, and not by the Governor. The final decision is to be made by you, and not by me. My recommendation is, nevertheless, necessary to bring the case within your jurisdiction. It would seem, therefore, to be the duty of the Governor, if a *prima facie* case be made out before him, to send it to you for adjudication.

The charges in this case are presented by respectable citizens, and substantially indorsed by the county board of supervisors, and are supported, many of them, by affidavits, *ex parte*, and other proofs.

I therefore recommend that you inquire into the charges so made, and, if the truth and sufficiency thereof shall be established, that the said Horace G. Prindle be then removed from the office of county judge and surrogate of said county.

JOHN T. HOFFMAN."

The respondent, pursuant to a notice served on him to that effect, appeared before a committee of the Senate, and issue was joined on the charges by the interposition by him of a general denial. On that issue witnesses have been examined both on the prosecution and on the part of the respondent. The case has been conducted with distinguished ability by the counsel employed for the respective parties. The Senate have had the benefit of the examination and argument of counsel for and against the charges and the removal of the respondent from his office of county judge and surrogate.

These proceedings are instituted under the provisions contained in section 11, article 6, of the Constitution. That section reads as follows:

"§ 11. Judges of the Court of Appeals and judges of the Supreme Court may be removed by concurrent resolution of both houses of the Legislature, if two-thirds of all the members elected to each house concur therein. All judicial officers, except those mentioned in this section and except justices of the peace and judges and justices of inferior courts not of record, may be removed by the Senate on the recommendation of the Governor, if two-thirds of all the members elected to the Senate concur therein, but no removal shall be made by virtue of this section unless the cause thereof be entered on the journals, nor unless the party complained of shall have been served with a copy of the charges against him, and shall have had an opportunity of being heard. On the question of removal the ayes and nays shall be entered on the journal."

The question which the Senate has to decide is, whether the respondent has done any thing or committed any offense which makes him unworthy and unfit to hold the office of county judge and surrogate, to which he has been elected by the electors of the county of Chenango. The first inquiry that arises is, what are sufficient grounds or causes for the removal of a judicial officer under the provisions of the Constitution of the State which have been read? The same Constitution provides that judges of the Court of Appeals and justices of the Supreme Court may be removed by the concurrent resolution of both Houses of the Legislature, if two-thirds of all the members elected to each House concur therein, or as it is technically called, by legislative address. And it would seem that the judges and justices referred to may be removed for cause or without cause, and are virtually left, so far at least as regards the mere tenure of their office, to the sovereign will and pleasure of the two Houses of the Legislature. No copy of the charges are required to be served upon the judge or justice complained of, nor is he allowed an opportunity of being heard. When two-thirds of both branches of the

Legislature have determined that a judge or justice ought to be removed, the purpose is accomplished by the adoption of a concurrent resolution to that effect. The same Constitution provides for a court for the trial of impeachments, and confers the power of impeachment upon the House of Assembly. The Constitution does not designate what officers are amenable to that court. It refers to the Governor and judicial officers, but it is understood that all officers, whether elected or appointed, exercising their functions under the provisions of the Constitution, or of a statute creating the offices, are liable to impeachment, unless otherwise provided by some law or statute. The Court of Impeachment may, after a trial, pronounce judgment of removal, and this judgment vacates the office and its tenure ceases. The statute also provides that the office of every civil officer in this State becomes vacant by the conviction of the incumbent of felony in any court of competent jurisdiction, and *ipso facto* the office is vacant. So far as all judicial officers, except judges of the Court of Appeals and justices of the Supreme Court, and except justices of the peace, and judges and justices of inferior courts not of record, are concerned, the Court of Impeachment, and the Senate on the recommendation of the Governor, have concurrent jurisdiction to remove, and such officer may be removed by the Senate for impeachable offenses, and therefore the power of impeachment, under section 1 of the Constitution, and the power of removal under the other, are concurrent remedies. And while the Senate may remove an officer or judge for an impeachable offense, there are other grounds upon which he may justly be removed, which, perhaps, may not constitute an impeachable offense. But it is quite clear that the Senate is not authorized to remove a judge from mere caprice, nor can it, by virtue of the power conferred by the Constitution, rightfully remove a judge without some good and sufficient cause. The provision of the Constitution is that no removal shall be made unless a copy of the charges shall have been served upon the party complained of, and he shall have had an opportunity of being heard. The charges must first be laid before the Governor, and if, in his judgment, they set out a *prima facie* case for removal, he transmit them to the Senate with a recommendation for his removal. The term "charge," in the sense used in the Constitution, signifies an *accusation* of some act or conduct involving moral turpitude, and the charges, a copy of which is required to be served, must contain some allegation or allegations, either of an offense, or some improper conduct on the part of the person accused, or some incapacity which would render him unfit longer to hold the

office. Under the military code, all offenders are tried before a court-martial upon charges and specification, and the charges may contain any violation of military law, from conduct derogatory to the character of a soldier or unbecoming an officer and a gentleman, to the highest crimes known to the criminal law. The word "charge" as thus used, I think, has the same signification in military law and in the Constitution. In my judgment it is not necessary that the person complained of should be guilty of mal or corrupt conduct in office in order to make out a good cause of removal. If it appears that he is unfit for any reason longer to hold a judicial office; that he has, by his conduct, degraded himself in the eyes of the community; that he lives in open violation of the established laws of morality by which society is regulated and controlled; that he has become insane or otherwise mentally incapacitated, a case is made out to authorize the Senate to remove him.

The question recurs, first, Has the respondent committed any offense for which he is liable to be impeached? Second, Has he been guilty of mal and corrupt conduct in office not amounting to an impeachable offense? Or, third, does it appear that his character and conduct is such as to render him unfit longer to hold the office to which he was elected by the electors of Chenango county. If the Senate is satisfied from the evidence that the respondent is guilty under all, any, or either of these propositions, the judgment of removal should be pronounced against him. The charges against him are fifty-four in number. They do not set forth so many distinct offenses, but a large number of them might properly be called specifications under a general charge. They may be classified as follows:

First. That the respondent unlawfully and corruptly refused to draw papers necessary to be drawn for the purposes of his official action as surrogate of the county of Chenango. Second. That having one George W. Ray as a clerk in his office, he allowed him to draw and prepare papers, such as were required to be drawn in the discharge of his judicial office as surrogate, and allowed him (Ray) to practice before him as such surrogate, and to receive pay therefor. Third. That he allowed, authorized and encouraged Ray to draw petitions and other papers necessary in the course of the administration of estates by executors, administrators, and charge and receive pay out of the estates which were adjudicated upon and settled before him as surrogate, for services which, by the statutes, he as surrogate was required to draw and prepare without any compensation. Fourth. That the respondent has acted as attorney and counselor in the

Supreme Court in cases pending therein, and wherein the party for whom he appeared was an executor or administrator over whom or whose accounts he had jurisdiction. Fifth. That the respondent, in proceedings for proof of wills of deceased persons before him, has, in contested cases, granted orders to pay to attorneys and counsel, employed by the proponents and contestants out of the estates for which they respectively appeared, counsel fees in amounts varying from $100 to $500. Sixth. That, as surrogate, he induced one Esther Hook, acting as executor of her deceased husband's will, in the course of the administration of the estate, to sell to him certain United States bonds bequeathed to her by her deceased husband, at their par value, when they were worth a premium over and above the amount he paid therefor, without disclosing to her the fact that said bonds were worth a premium over and above their par value. Seventh. That during the years 1865, 1866 and 1867 he did not render to the board of supervisors an account of the fees received by him in his official capacity as county judge and surrogate in the manner required by the statute, and did not pay over to the treasurer of the county all the fees he had received, as by law he was required to do. Eighth. That in proceedings had for the bonding of the town of Greene before him, he corruptly and unlawfully took and received a large sum of money on account of services rendered by him as county judge, on the application to have said town adjudged bonded in aid of the Greene Railroad Company. Ninth. That in proceedings pending before him as county judge, to bond the town of Smithville, in aid of the Central Valley Railroad Company, he corruptly made known what decision he should make, and the commissioners he should appoint, long anterior to the publication of his decision, to enable the party to whom he had made the disclosure to gain undue advantage over the contestants in said proceedings. That he did make such decision, and appoint such commissioners, in pursuance of a corrupt understanding or agreement between himself and the persons who were endeavoring to procure the bonding of such town. Tenth. That he refused to submit to an examination in pursuance of a subpœna issued by the board of supervisors of the county of Chenango requiring him to appear before the board and be examined as a witness in relation to the discharge of his duties as county judge and surrogate, and the receipt and disbursements of money received by him in his official capacity.

The foregoing, it seems to me, embraces substantially the charges contained in the fifty-four specific charges which have been laid

before the Senate, and upon which the evidence has been taken. Before taking the vote upon each charge separately, as required by the rules which we have adopted for our government in the investigation of this case, I desire to express my views upon what I regard the leading and prominent questions involved in the investigation, without, at this time, examining the specific charges.

I. In my judgment, it is no part of the official duty of the surrogate to draw petitions for the proof of wills, the issuing of letters of administration and guardianship and final accountings, and other papers upon which he is to act officially. The first subdivision of section 2 of chapter 300 of the Laws of 1844 is as follows: "For the following services hereafter done or performed by surrogates, the following fees shall be allowed." Then follows an enumeration of the services for which the surrogate should be entitled to receive fees, a portion of which are official and a portion of which are not. It is clear that there is nothing in the act making it obligatory upon the surrogate to draw these papers. But it is claimed that the first clause of the ninth section of the act passed May 12, 1847, as amended by chapter 95 of the Laws of 1849, has this effect. That clause is as follows: "Such county officers shall in no case perform any official services, unless upon prepayment of the fees and perquisites imposed by law upon any person for services rendered by such officer in his official capacity, and upon such payment it shall be the duty of any officer to perform the services required."

This law only makes it the duty of the surrogate to perform official services upon prepayment of the fees; and the services in question can in no sense be considered official; they may be performed by any one else as well as the surrogate. Even if it was the intention of the Legislature to compel the surrogate to perform these unofficial acts, in order that the fees might be received into the treasury, it does not follow that it is still his duty, after fees are abolished. The literal reading of the law as it now remains would inhibit the surrogate from performing any of the services coming within the purview of this statute. He can only perform them on prepayment of the fees, and is now forbidden to take any fees. No statute does or should compel him to become the clerk or attorney of parties having business before him.

Section 8 of chapter 362, Laws of 1863, provides for the allowance of counsel fees, on the settlement of the accounts of executors and administrators and preparing therefor, not exceeding $10 a day. This is the allowance for services for which the surrogate received fees under the law of 1844, and is inconsistent with the

theory that such services are a part of his official duty. Lawyers having business before surrogates and in surrogates' courts are in the constant habit of drawing the papers upon which the surrogate acts, and charging executors, administrators and guardians therefor, who, in turn, charge the amounts to the estates they administer, and such practice has never been questioned by the courts.

All the charges, therefore, against the respondent, based upon the idea that it is obligatory upon the surrogate to draw such papers, are, in my judgment, entirely unsustained.

II. It follows from this that there was no impropriety or violation of law in allowing Mr. Ray, as an attorney and counselor at law, to practice in the surrogate's court, as it appears from the evidence in the case that he did. It was right and proper, and is almost a universal practice for lawyers throughout the State to act as attorneys and counselors for executors, administrators and guardians before the surrogate's court, and to draw and charge for the necessary papers required to be drawn in all proceedings before the court. The statute prohibits a surrogate from allowing his clerk to practice before him; but it seems to me that a fair view of the evidence does not prove that Mr. Ray was the clerk of the surrogate within the meaning of the statute. The language of the statute is as follows: *No son, partner* or *clerk* of any surrogate shall be permitted to practice before such surrogate, as attorney, solicitor or counselor for any party, to any proceeding before him, in his official character." The clerk referred to was not the statutory clerk, because the law did not then authorize the surrogate, as such, to have a clerk. The surrogate's court had no clerk. I think the clerk referred to was the law clerk or student of the surrogate, upon the assumption that ordinarily surrogates would be lawyers. Mr. Ray clearly was not such a clerk, and did not occupy any such relation to the respondent. As a practicing attorney and counselor at law, he had his office in the same room with the surrogate's office. He was there for the purpose of practicing his profession in that court and rendering assistance to administrators, executors and guardians, in the business which they were compelled to transact before the surrogate. For the services rendered, he received the pay to his own use and benefit. There was no doubt that he was of great service, both to the surrogate and the parties for whom he appeared, in expediting and simplifying the proceedings before the surrogate. It is not insisted, as I understand it, but that the prices charged and received by him for his services were fair and reasonable, and assuming that the sur-

rogate was not bound to draw the papers or perform the services which were rendered by Mr. Ray, and that if Mr. Ray had not been employed, administrators, executors and guardians would have been under the necessity of employing other counsel to perform the same service, it seems to me that no just ground for complaint could be brought against the surrogate for allowing Mr. Ray to have an office with him, and to perform the services which were rendered by him, and to receive the compensation which he received. It was right and proper, and an advantage and convenience to those having business with the surrogate, that he should have a competent person in the office to assist them. That Mr. Ray was such a person there can be no doubt; there is no complaint that he did not do his work well, and the uncontradicted evidence shows that he received much less than other lawyers were in the habit of receiving for the same services. Thus it appears that when the respondent referred persons to him for the transaction of business, he not only violated no law, but conferred a substantial benefit upon the estates interested.

III. The evidence under charge seventeen shows that the purchase of the bonds of Mrs. Esther Hook was a private transaction, in no way connected with the official action of the respondent. He purchased them as an individual and not as an official; they belonged to Mrs. Hook individually, and the money she received for them was her own property, to use as she pleased. It was not a transaction in the course of the administration of this estate of which she was executrix. Even if we felt called upon to enter into an examination of private transactions of this character, in search of cause for removal, we should find nothing in the evidence showing the transaction of a fraudulent one on the part of the respondent. Mrs. Hook knew there was a premium upon the bonds, and her grandson, who was present, spoke to her about it during the transaction. There is no evidence whatever of any fraudulent misrepresentation or concealment. I have said that conduct on the part of a judicial officer, involving gross moral turpitude, is a ground for his removal; but it should be such as is open and repugnant to the moral sense of the community; such as tends to deprive him of the confidence and respect of those who are compelled to have official intercourse with him. It is not every violation of what is understood to be the strict rules and obligations of the moral law that will justify the removal of a judicial officer. If it were so, who would escape? Who would be without sin to cast the first stone? If a judicial officer performs the duties of his high office honestly, impartially and uprightly, if he possess the necessary qualifications, and has the requisite capacity and ability,

he ought not to be removed from office, so long as his general conduct entitles him to be recognized as a respectable member of the society in which he moves. He may make a hard bargain and yet be an honest judge. He may by his business shrewdness gain a pecuniary advantage, and yet hold the scales of justice with an impartial hand. If he is not guilty of any violation of law, any extortion, any fraudulent overreaching in his dealings with his fellows, and is honest and upright as a judge, the judicial office will suffer no dishonor, and the State no detriment at his hands. The fact that there was a woman in this case makes the affair, perhaps, appear more heinous than if the same transaction had been with a man of the same age. But the appearance of Mrs. Hook, as a witness on the stand, indicated that she is a woman of some shrewdness, and of more than ordinary capacity and understanding. The evidence shows that she knew that the bonds in question were worth a premium; she was aware that, when her husband purchased them, he paid a premium for them. But for some reason she was induced to part with them to the respondent without ascertaining what the premium upon them was, and seemed to be satisfied with receiving their par value. It may be well said that the respondent ought to have advised her that her bonds were worth a premium. I will not say that he ought not to have done so; but he was under no legal obligation to protect the rights of Mrs. Hook. She had voluntarily disclosed the fact that she was the owner of the bonds in question, and desired to sell them for the purpose of obtaining money for her grandson; she offered them to the respondent, and he proposed to take them at their par value, which proposition she accepted. It seems to me that this single transaction, and only one which his accusers, in an investigation which has been conducted with so much ability, vigor and acrimony, has been able to discover against the respondent, in which it appears that he has obtained any advantage in a business transaction which is open to criticism or censure, ought not to be regarded as a good, sufficient cause for removal.

IV. The evidence under charge V shows that the respondent, by allowing himself to be employed by Austin Barrows, an executor, to bring an action in the Supreme Court for authority to sell the real estate devised by the will, violated the law forbidding his being the attorney of an executor over whom or whose accounts he could have a jurisdiction by law. But he did it without it occurring to him that there was such a law, even if he knew it, and consequently he could not have done it willfully in the sense of the accusation. I know it has been said that ignorance of the law is no excuse for

its violation. While this is true in the abstract, there may be circumstances attending or surrounding the violation which should be regarded as palliative or exculpatory. But should the violation of a statute be held as a sufficient cause of removal, and every judge be removed who has committed this offense inadvertently or unwittingly, few, if any, would be left on the bench. Whatever the respondent did in procuring the judgment, he did as attorney of the Supreme Court, and I have failed to see any thing irregular or illegal in the conduct of the action. The action was a necessary and proper one to be brought; the defendants were properly brought into court, and appeared by an attorney of the court duly authorized; the pleadings were appropriate; the order for judgment, and judgment were regular, legal, and properly obtained. There can be no pretense that the order for judgment, fixing the costs and expenses in the action, was procured by any fraud or malpractice. It was regularly certified by the clerk of the court in which it was obtained in the usual way; and Judge Boardman, who held the court, cannot testify that the respondent did not call his attention to the amount of costs and counsel fees.

It is insisted, by one of the counsel for the prosecutors, that the order was illegal because the costs were not taxed under the Code; that the law does not permit the allowance of any sum in such cases in addition to the statutory fees. In this, I think, he is mistaken. Courts of equity may make such allowances to trustees and others, suing or defending *in autre droit*, and to any and all parties in actions for the construction of wills, and in relation to charities. *Rose* v. *Rose Association*, 28 N. Y. Rep. 190. This judgment, then, was regularly procured by the respondent as an attorney, and the fact that he was the surrogate of Chenago county in no way aided him in procuring it. He could have procured it in the same way with the same allowances for cost and expenses had he not been such surrogate. Any other attorney could have done the same. It is true the surrogate allowed the executors, on the final settlement of his accounts, the amount he paid upon this judgment; but the judgment of the Supreme Court had fixed the amount and ordered the executor to pay it, and no surrogate could have refused to allow it. There is no evidence that the costs and expenses inserted in the judgment were too large. Even if the Senate should feel disposed to regulate the charges of attorneys and counselors in the Supreme Court, all the proof is, that they were reasonable. The offense, then, proved under this charge, is an ignorant or unwitting violation of the statute, not *malum in se*, but only *malum prohibitum*. The charge is

that the statute was willfully and corruptly violated, but if it embraced the case proved it would fall far short of being a sufficient case for removal. And it should be noted that the parties interested make no complaint; they do not complain that the respondent received too large a sum for his services; and if no wrong has been done, if what the respondent did was right of itself and would not be the subject of any well-grounded complaint, if he had not been, at the time of rendering the services, a surrogate; then it seems to me, if it is believed that he did it in ignorance of the law, or if, knowing the law, he did it inadvertently, without at the time remembering or having his attention called to the fact that there was such a law, then, in my judgment we ought not to regard this as a sufficient cause for removal. Though a lawyer and a judge ought, and ordinarily is, supposed to know all the law, yet it is well known to every lawyer that, in the practice of his profession, many statutes and laws of which he has been made aware are not unfrequently overlooked and lost sight of; and what is true of lawyers is true of judges, that many laws of which they have before had knowledge are frequently overlooked and forgotten, unless attention is especially called to them. This was illustrated in the case of Judge Boardman, who was a witness before us, and who, although he had been a county judge and surrogate, stated he was not aware of the existence of the law which it is said the respondent has violated in this case; and, although the respondent appeared and acted as counsel on the trial of one or more cases at the circuit in which the party for whom he appeared and acted was an administrator or executor, yet not only did it not occur to the respondent that he was violating this law, but neither the counsel on the other side, nor the judge upon the bench, seemed to be aware of it, and the respondent was allowed to proceed without objection from either court or counsel, although it was clearly the duty of the court to raise the objection and inhibit the counsel from proceeding, and no doubt the court would have done so if its attention had been called to the statute.

V. As to the charge in relation to the method of reporting fees to the board of supervisors, and that certain fees were not reported, the matter is *res adjudicata*. Accounts were presented by the respondent each year and examined and settled by the board of supervisors, upon which the duty devolved, and who had ample jurisdiction in the matter. In *Supervisor of Onondaga* v. *Briggs*, 2 Denio's Rep., page 26, in which case it was contended that large amounts of illegal fees had been paid by the county to the district attorney, the fact that he had presented his accounts from time to time to the board,

and the board from time to time examined, settled, allowed and paid them, concluded the plaintiffs from maintaining the action to recover back the fees upon the two grounds, first, as adjudications of the matter made by a tribunal duly constituted for that purpose, and having ample authority to decide; and second, as voluntary payments without fraud, and with the full knowledge of the facts.

It was held, in the same case, that no action could be maintained under the statute making the taking of illegal fees a misdemeanor, and giving the parties aggrieved treble damages; the bills of the district attorney have been regularly taxed. The salary of the respondent, as county judge and surrogate, was $1,000, and he was allowed $400 for hire of a competent clerk, and to pay other expenses of the office. If he was compelled to pay more than this sum for such expenses, which can hardly be doubted, he had an equitable claim against the county for reimbursement. It must be found from the evidence, I think, that during the years 1865 and 1866 the board accepted his accounts with the knowledge that he had retained fees to meet these expenses, and with the knowledge that the affidavits to the county did not state that he had reported all the fees he had received. This manner of settling their fees seems to have been understood and approved by the board of supervisors; no fraud was practiced; no corruption proven. It does not appear that the respondent retained any more than enough to meet the expenses of his office. The knowledge and action of the board were such that we cannot, in my opinion, attribute that degree of wrong to his conduct that would justify his removal. And it seems to me, the imputed wrong was committed so long ago, that the charge may be fairly characterized as a stale one. The respondent was first elected county judge of the county of Chenango in 1863. At the expiration of his term in 1867, he was re-elected. At the expiration of his second term in 1871 he was again re-elected. The transaction in relation to the fees occurred in the years 1865, 1866 and 1867, during the first term for which the respondent was elected to the office. The manner in which he settled with the board of supervisors during those years was well known and understood. No complaint was made, nor was any imputation of wrong suggested until toward the close of the year 1871, just before the termination of the third term for which he had been elected to the office, when a vigorous and persistent attempt was made to prevent his re-nomination and re-election. And it seems to me that justice does not require at this late day, and under the circumstances which surround this case, that the Senate should for this cause remove the respondent from his office, and that we are

justified in saying that the board of supervisors settled this matter with the respondent, in a way and manner which, to them, seemed right and proper, and that this is one of the cases in which it is right and proper to hold that, as between the board of supervisors and the respondent, and as between the people and his accuser and prosecutors, who are asking for his removal, the question is *res adjudicata*.

VI. I think the respondent was clearly right in the position taken by him, before the board of supervisors, in resisting the attempt of the board to examine him concerning the discharge of his official duties. If the right existed under the statute to examine him at all, it would seem to follow that he could be examined in relation to the discharge of all his duties, including his judicial action in cases tried before him. The statute makes no distinction in official duties, and gives no more right to inquire into one class of these duties than another. Will any one claim that the Legislature intended to give boards of supervisors power to inquire into the judicial conduct of the county judge and surrogate? The proposition is absurd. It is repugnant to all our ideas of propriety; and the provisions of the statute requiring the facts to be reported to the county judge or to a judge of the Supreme Court, or to the Superior Court, or to the Court of Common Pleas of any city of the State, when any witness shall refuse to appear or answer, who is thereupon required to issue an attachment for such witness, affords strong evidence that the Legislature did not regard the county judge as one of the officers of the county to be examined under the statute. No construction should be given to this statute which would lead to the conclusion that the boards of supervisors, with no qualification for such duties, may become the tribunals for investigating the official conduct of judges. If the respondent was wrong in his position, the statute itself provides a sufficient and speedy remedy. There was, therefore, no necessity for bringing the matter before the Senate. He acted under the advice of counsel, too, and had a right to appeal to the courts, in the only practicable way, before submitting to a construction of the statute that would degrade his office.

VII. As to the charges relating to the bonding of the towns of Greene and Smithville, there is, in my judgment, an entire failure of proof to sustain them. Mr. Birdsall did not testify that he promised the respondent any thing for his services in the matter of the bonding of the town of Greene, or even intimate that any thing would be paid him. There is not only no proof that he ever did receive any thing on account of such services, but there is positive

evidence that he did not. Mr. Welch testified that Elizur H. Prindle reported to him that the judge thought he ought to have as much as he (E. H. P.) got; but in this he was contradicted by Mr. Prindle and by Mr. Shumway. No fault is found with the respondent's judicial action in this matter. Indeed, his decisions seemed to have been so clearly correct that Judge Boardman refused a writ of certiorari to remove the proceedings.

As to bonding the town of Smithville, there is not only a failure of proof that he improperly divulged any facts in the matter of the bonding of that town, or had any knowledge of, or connection with the preparation of the bonds previous to his decision, but the evidence is conclusive to the contrary. The testimony of all the parties concerned negatives the proposition. Preparations were made, by those engaged in the enterprise of constructing the road, to issue the bonds rapidly after the rendering of the decision, in order to avoid delay by injunction; but the respondent cannot be held responsible for that. Had he been in league with them, he would hardly have delayed his decision so long as to make it necessary to alter each bond with a pen, besides removing one of the coupons, as was the case.

VIII. Throughout this heated and bitter controversy there has been no charge or insinuation against the capacity, honesty or integrity of the respondent in his judicial conduct. All the charges pointing to his official conduct are for acts which are contended to be violations of statutes; acts which, but for the statutes, would be, in and of themselves, right and proper. They are *malum prohibitum*, not *malum in se*, because the Legislature has seen fit to prohibit them, not because they were in and of themselves wrong. The respondent has made no order or decision so far as appears from the evidence, through friendship for or partiality to any counsel or party, or any judicial determination through fear, favor, affection, reward, or the hope thereof. The rights of persons and property seem to have been fully protected, and the liberty of the citizen carefully guarded.

The complainants and prosecutors have made no charge, and there is none in the fifty-four before us, that he has not fairly, honestly and uprightly decided every judicial question that has come before him. There is nothing in the voluminous evidence to which we have listened, and which is now before us, tending to show that he has not held the scales of justice with an impartial hand, and that honesty, integrity, impartiality and fairness have not characterized his judicial action and decision. I regard this fact as of great

importance. He has held the office of county judge and surrogate of Chenango county for eight years, and nothing is heard against his uprightness and fairness as a judicial officer; and, is it not true that all or nearly all judicial officers violate statutes sometimes through inadvertence, sometimes through ignorance of their provisions? These occasional mistakes, which must ever occur, so long as judges remain human, afford no just ground for their punishment or removal from office.

The question for us to decide is whether, taking the whole conduct of the respondent during the time that he has exercised the functions of a judicial office in the county of Chenango, and possessing, as he does, the frailties which are common to our humanity, we can say he has not been an honest, upright judge. Can we find that he has committed any gross immoralities which would justify us in subjecting him to the severe and cruel censure of a removal.

There is another consideration which has no little weight with me. The respondent has been elected and re-elected after all, or nearly all, the acts had been done which are made the subject of these charges. It appears in proof before us that, in the canvass preceding his last election, they were disclosed and widely discussed among the people of his county. With a full knowledge of these charges, in view of his previous record as a judge, which was before them, they elected him, giving us the highest evidence possible that they desired to retain him as their county judge and surrogate. They know him better than we do. We have only heard evidence concerning charges against him, while they, for eight years, have been witnesses of the administration of his office, and know with what ability and integrity he has discharged his duties. In view of these facts the Senate should hesitate long before reversing the decision of the people of Chenango county, or interfering with their right of choosing their own officers conferred upon them by the constitution.

I am aware it is our duty, as judges, not to allow our sympathies to control or materially to modify our judgment. But it seems to me we are not required to eliminate the element of mercy in coming to a conclusion and forming our determination. It is a case I submit, where it is eminently fit and proper that judgment should be tempered with mercy.

> "The quality of mercy is not strained.
> It droppeth as the gentle rain from heaven
> Upon the place beneath: it is twice blest,
> It blesseth him that gives and him that takes.

'Tis mightiest in mightiest; it becomes
The thronèd monarch better than his crown.
His sceptre shows the force of temporal power,
The attribute to awe and majesty,
Wherein doth sit the dread and fear of kings.
But mercy is above this sceptered sway;
It is enthronèd in the hearts of kings,
It is an attribute to God himself,
And earthly power doth then show likest God's
When mercy seasons justice."

Senator BENEDICT — Mr. President: I desire to give you the reasons for the votes which I shall give on these charges, that I may not be misunderstood. The charges are numerous, but those which are material may be considered under five classes.

1. Those which relate to the taking of legal fees, and not keeping and rendering any proper account of them according to law, and making evasive affidavits on the subject.

2. Taking fees illegally.

3. Refusing to perform the official services which it was his duty to perform.

4. Allowing one of his clerks to practice before him as attorney for parties to proceedings before him.

5. Practicing in another court contrary to law. A reference to some sections of the statutes is necessary before considering the charges.

Previous to the constitution of 1846, surrogates were compensated for their services by fees. A tariff of these fees, in detail, was from time to time established by statute, providing fees for all services connected with the business of the office. These services embraced their whole official duty, and these fees constituted their whole official income. They had no salary. It was their duty to perform the services. If they required assistance, they paid for it out of their own compensation.

Acts establishing this tariff of fees will be found 2 Greenleaf's Laws of New York, 257; Act of 18th Oct., 1787; 2 Webster's Laws of New York, 25, 26; Act of April 8, 1801; 1 Rev. Laws, 27, 28, 30, § 5; Act of April 9, 1813; 2 Rev. Stat. 640, § 32; Laws of 1844, chap. 300, page 445.

By the act concerning the proof of wills, etc., passed May 16, 1837, chap. 460, it is provided that "every surrogate shall keep a book of fees which shall pertain to his office, and be subject to inspection in the same manner that his books of records are, in which he shall enter at length, and by items, the fees charged and received by him

on all proceedings had before him, under the name of each testator and intestate." (Laws of 1837, page 524.) The object of this careful and open record is apparent. By an act entitled "An act respecting the fees of surrogates," passed May 7, 1844, a new scale of fees, in detail, was adopted by section two, providing that for the following services hereafter done or performed by surrogates, the following fees shall be allowed, nor shall they be entitled to receive any other fees therefor. I quote only some of the services, to show what service he was to render for the fees he received. "Drawing proof of a will;" drawing every petition; "copying and recording papers;" drawing, copying and approving every bond; "citations;" "summons;" "subpœnas;" "affidavits;" "recording wills," etc.; "copies and exemplification of records;" "taking, stating and determining upon an account rendered upon a final settlement;" "making, drawing, entering and recording orders;" "appointing a guardian to defend." For all these services, there were specified fees to be received by the surrogate, of which the following example is given in the full words of the statute, because I purpose to refer to it again.

"For drawing and recording all necessary petitions, depositions, affidavits, citations and other papers, and for drawing and entering all necessary orders and decrees, administering oaths, appointing guardians *ad litem*, and appointing appraisers, and for rendering every other necessary service in cases of proof of will and issuing letters testamentary, when not contested, and the will does not exceed fifteen folios, surrogates shall receive $12."

When the compensation of surrogates was changed from fees to an annual salary, it is a great mistake to suppose that he was excused from the service by a change in the mode of compensation. The salary was for the same services which were before compensated by the fees. These are such services as are now in question before the Senate, and it is plainly the duty of the surrogate to perform them.

Senator WOODIN—May I ask the senator what he understands by the expression "drawing of the proof of will?"

Senator BENEDICT—Certainly; proofs of wills are recorded.

Senator WOODIN—That is the writing of it in his book?

Senator BENEDICT—That is the taking of the testimony, entering it in his book as he is bound to do.

Senator WOODIN—I have forgotten the year of that statute.

Senator BENEDICT—It was in 1844.

Senator WOODIN—If the senator will allow me to ask one question, with the purpose of getting more light on that point; suppose some lawyer had drawn all these papers, and the surrogate taken the

proof and recorded the proof, and issued letters testamentary, would he have been entitled to charge $12?

Senator BENEDICT—Certainly; there is no question about it. The senator from the twenty-fifth cannot be unfamiliar with the rule, that if such a thing is done by lawyers, it is done as his clerk—it is done for him; there is assistance rendered him by the lawyers. I think that is the experience of all who have had any experience in conducting such matters before surrogates. It is very clear that he is entitled to the fees, although he does not himself write the paper; the law does not require him to write the paper, but it requires him to see that it is done, and that it is paid for.

Senator LEWIS—Is there proof to show that a portion, or nearly all, of that $12 paid by Mrs. Hook was for stamps used?

Senator BENEDICT—No, sir; the proof don't show there was a cent for stamps. The young man went out and bought the stamps—the grandson. That was the only charge proved before us, but who can say there were other charges? We must infer many things from one thing. I would not infer that he had been guilty of such a charge in any other case, if that stood alone, perhaps; but we are to remember that we are dealing with an officer who deals with people confidentially, and here we happen to bring out one case incidentally. It don't appear to be known to the counsel where she paid $12. I shall leave the bond case to the senator from the third. Mr. Ray testifies as follows: "Judge Prindle almost invariably said to those parties coming there, it is not my duty to draw these papers," etc. Those are the only two instances I have hunted up on that point, as it was testified to by Mr. Ray, that that was the habitual practice of the surrogate to tell them squarely, "I won't do the business; go to Mr. Ray;" when it was his duty to do the business under his oath and the law; and if it required assistance to write the papers let him employ them; he had $400 allowed by the county for that purpose, which he put in his pocket.

Senator JAMES WOOD—Mr. President: I desire to ask the senator a question.

Senator BENEDICT—Certainly.

Senator JAMES WOOD—The statute provides that no son, partner or clerk shall practice before the surrogate. At the time that act was passed, was there any such thing known as a surrogate's clerk?

Senator BENEDICT—No, sir.

Senator JAMES WOOD—Does not the word "clerk" there refer to the clerk of the surrogate who is a lawyer, and has a clerk in his

office and under his control, and who is made a clerk by being in there?

Senator BENEDICT — No, sir; the assistants in his office, attendants upon him and for him, with the books and papers of his office, should not be allowed to practice before him.

Senator JAMES WOOD — Was there any person at the time that act was passed, that the language could refer to but the clerk; I mean in the sense of a clerk in a law office?

Senator BENEDICT — No other.

Senator JAMES WOOD — A student at law. Is not that what the law refers to?

Senator BENEDICT — No, sir; the other portions of the testimony and the other charges I have not thought it worth while to occupy the time of the Senate with; the charges in relation to the bonding of the town, I don't think was satisfactorily proved against Judge Prindle, that he attempted to act falsely in bonding the towns, and therefore I have said nothing about it.

Ray, I insist, is clearly proven to be a mere clerk in the office of the surrogate; as far as the office of the surrogate is concerned, an assistant, like a merchant's clerk or anybody else's clerk, and that he was not entitled to charge any thing in that capacity.

Senator ADAMS — Mr. President: I desire to ask the senator a simple question, whether it is not proved that the surrogate wrote those papers and charged for them, or whether the proof is that Ray did it?

Senator BENEDICT — I suppose those to be the cases drawn by Ray.

Senator ADAMS — Then I desire to ask whether, in your opinion, as a lawyer, the surrogate has not the right to employ Ray, and whether Ray has not the right to perform the service, he being a clerk?

Senator BENEDICT — I don't think the surrogate had a right to employ a man to draw these papers for him.

Senator ADAMS — In other words, whether the surrogate was obliged to draw these papers or not?

Senator BENEDICT — He was obliged to have them drawn or draw them himself in that sense, every one of them, and that they were drawn by him.

Senator PERRY — Do you consider it a part of his duty?

Senator BENEDICT — I do, undoubtedly.

Senator LEWIS — I desire to ask the senator a question. This question of taking the twelve dollars from Mrs. Hook, is there any

other testimony except that of Mrs. Hook and Judge Prindle upon that point?

Senator BENEDICT — I don't know that there is.

Senator LEWIS — I desire to read the testimony on that subject, which is very short. It is at page 318 of the testimony. The first states the amount of the estates was estimated at $7,000.

"Q. State what conversation you had with him in reference to the amount of his fees for proving the will? A. Well, there wasn't much conversation about it; when he got through with the business, I asked him what was to pay, and he told me.

Q. What did he say? A. Twelve dollars; I think that was the amount, as near as I can recollect now; I have never looked it over.

Q. Did you pay the money? A. I paid the money right there, on the spot.

Q. Who did you pay it to? A. Judge Prindle; I didn't see no other man in the office; I done business with no other man at all."

Now page 895 is Judge Prindle's evidence.

"Q. You say that you drew the papers for Mrs. Russell? A. Yes, sir.

Q. How much did you charge her for that business? A. I don't think she paid any thing, except for the stamps."

There is no testimony, so far as I can recollect, or so far as I see, of this lady swearing she paid any thing to purchase stamps, as I recollect, and the presiding officer will be better posted upon that than I am; as I recollect, it is a dollar a thousand for the stamps; the stamps, then, would cost $7.

"Q. Do you say she didn't pay you the sum of $12? A. I don't think she did.

Q. Do you say she did not? A. I would not swear positive, but I have no recollection of it, and no entry on my cash book.

Q. Do you say she did not? A. I say, I don't think she did.

Q. Well, sir, can you swear positive? A. That is the best I can state; I don't think she paid any thing, except for stamps; I think the young man was sent out by me, and I told him how many stamps to get, and he went out and got them.

Q. Is that as strong as you can swear? A. I heard her swear she paid $12, but I have no entry of the kind, and my recollection is to the contrary.

Q. Can you swear any thing stronger than what you have already sworn? A. No, sir."

Senator WOODIN—Page 324, at the top of the page, I refer the senator to.

"By Mr. E. H. PRINDLE:

Q. I didn't fully understand what you said in regard to paying money; do you remember how much you paid? A. I think it was $12.

Q. Are you positive of that? A. Well, I cannot say positively, but I think it was."

I am informed by the senator, who sits at my right, that the stamps would cost $7; I have no recollection upon the subject. I am not going to occupy a moment, except that the senator seemed to place great reliance upon the testimony, upon this particular charge. Now it seems to me, taking the position that we are to give Judge Prindle the benefit of a reasonable doubt, that this testimony is pretty evenly balanced. Here was an old lady seventy-two years of age, who was relating what occurred four years prior to the time she was giving her testimony; she did not pretend to be certain about her recollection; she has been badgered, from time to time, by those who are pursuing Judge Prindle; she was before the grand jury; she made her affidavit, etc., and she might very easily be mistaken as to the amount. Judge Prindle is quite as positive that she did not pay $12, yet she says that she did; and I take it that no lawyer who has been accustomed to practice law would, for a moment, entertain the notion that an individual should be convicted when one witness was swearing to one fact, and the other, equally confident, contradicting that one.

The PRESIDENT *pro tem.*—I will correct the senator. It is a dollar for the first two thousand, and fifty cents for every additional thousand.

Senator BENEDICT—Judge Prindle says he did not keep a memorandum; he swore before he did not keep a cash book and no record of his accounts; and his testimony, in my judgment, is clearly evasive upon that subject. If he was confident that he never charged the old lady any of those fees, he would have said so very positively; but it is very clear that he evaded it.

The same act, section 4, provides that "no son, partner or clerk of any surrogate shall be permitted to practice before such surrogate as attorney, solicitor or counsel for any party to any proceeding before him." It is perceived that these prohibited persons have no official relation to the surrogate. The clerk referred to is not an official clerk of the Surrogate's Court, for there was then no such officer known to the law, but it means an assistant in his office who might be a lawyer and thus competent to act as counsel, attorney or solicitor, but from his intimate association with the sur-

rogate, and his business and connection with the books, records and management of the office, ought not to practice before him.

The act of May 12, 1847, provided for salaries for the compensation of surrogates and county judges (p. 312, § 4), and the paying the fees to the county treasurer (p. 313, §§ 8, 9, 10), and the act of March 12, 1849 (chap. 95, p. 135), amending that act, provides that no such officer shall perform the services without collecting the fees in advance, and directs him to pay them to the county treasurer, less his salary in May and November, each year, and also to render an account, giving each item of fees received, verified by his affidavit, to the board of supervisors at their annual meeting of each year; this to include all fees received by him for any thing done in his official capacity, whether it pertained to his office or not.

The fees were thus made the property of the county, and it was his duty by statute to collect them, and to account to the supervisors under oath. It was hence the evident duty of the supervisors to look into the account, and being their duty they had the power to do so, as they had by express statute. (Laws 1849, chap. 19, 464, subd. 14; Laws of 1858, chap. 190, § 1.)

Judge Prindle came into office as surrogate January 1, 1864. In that year, 1864, his first year, he collected the fees, as he should do; he kept the book of fees correctly; he rendered his itemized account, rendered his report correctly, swore to it truly, and accounted to the supervisors faithfully, as he should do. This compliance with the statutes shows that he knew his duty, and he also testifies that he knew it, yet, after that year, he always knowingly violated it up to the time of these charges, five years. On this subject I will refer to no testimony but his own.

He testifies as follows (p. 906):

"Q. You know about the law requiring an itemized report of your fees that you received? A. Yes, sir.

Q. Have you known about it since you have been in office? A. I think so.

Q. You knew about the law which required you to pay over the amount of fees received by you, after deducting the amount, to the treasurer semi-annually? A. I presume so.

Q. When you made your report of fees in the years '65, '66, '67, did you know you were violating the law in the manner in which you made that report? A. Well, I knew I didn't make the items of the amount of fees, of course.

Q. Did you know you were violating the law when you made that report? A. Technically, perhaps I did.

Q. Did you know, sir, that you were not reporting the full amount of fees that you had received during three years? A. I did.

Q. You did know it? A. Yes, sir.

Q. Did you leave out any statement of your affidavit purposely, to the effect that you did not receive any more than you reported? A. I made that affidavit for the reason I had never kept a book of fees, as mentioned in the law, and therefore could not swear that these were all the fees I had received.

Q. You failed to report the full amount of fees you had received, then, purposely? A. I state the fact; I knew I had not reported the full amount of fees in these years.

Q. You have always kept, since you have been county judge, a memorandum of the cash received? A. I have not.

Q. Haven't you kept a memorandum book of the cash received and cash paid out, and been very particular about it too? A. No, sir; I have not."

It becomes, then, important to know what became of the money which he thus received. He testifies as follows (p. 907):

"Q. What became of the money which you had collected as fees, and failed to report, in those years? A. When I received any fees, of course I spent it as I went along; I had to live."

That is to say, he received the fees which belonged to the county, and spent it as he went along for his own living. He did not keep any account of the fees, and did not account for them. I do not overlook the fact that he testifies as follows, in extenuation: "I say, upon a fair accounting between the county and myself, the county would owe me to-day."

The county had paid his full salary for his services, provided him an office, and office expenses and blanks, allowed him a salary of $400 to hire a competent clerk to do the desired work of his office, which salary he put into his own pocket instead of paying for clerk hire. For what then can the county owe him? The supervisors, the proper financial officers of the county, desired to look into and verify his accounts, and apparently to take and state a fair account between him and the county. This furnished an opportunity to ascertain and recover any balance due him from the county. They summoned him before them for an accounting, but he refused to testify and produce his books, papers and accounts, and denying their jurisdiction; he left the room where they were sitting, raising a suspicion that he feared rather than desired a fair accounting. He justifies his refusal by the advice of counsel. If his counsel was

fully informed of the facts, it seems to me the advice was discreet. The punishment, by statute, from the earliest period, for excessive fees, was treble damages to the party, a fine to the State, and forfeiture of the office. (2 Greenleaf, Laws N. Y. 260, § 7; 2 Webster, Laws N. Y. 38, § 4; 1 R. L. 30, §5; 2 Rev. Stat. 650, §§ 5, 7.)

These statutes to which I have referred, and these facts, without going further, seem to me to require the removal of this officer. I can hardly believe that there is a corporation or an individual, that would retain in his place, for an hour, an officer or clerk who had been discovered to practice such violations of known duty, and such habitual pecuniary unfaithfulness, even though the amount should be small, and though he had spent the money as he went along, because he had to live, and it would hardly be considered an extenuation that he had done it all along for five years, covering it up by swearing to insufficient and evasive affidavits; and that if he should flatly refuse to render any account — if the humble man in business would not be excused, ought we to treat with more leniency a lawyer and a judge?

2. As to taking illegal fees; in this class I shall refer to only the case of Mrs. Hook (Russel); although the fees received by Mr. Ray were in most instances substantially surrogate's fees, illegally demanded, they were charges for services which the surrogate was bound to perform by himself or his clerks. Judge Prindle testifies, speaking of Mrs. Hook: "I had never seen her before; she came then for the purpose of having her husband's will proved; I drew the petition for the proof of the will, examined the witnesses, issued letters testamentary to her as executrix." She says also:

"I did not see no other man (than Judge Prindle) at the office. I done business with no other man at all.

"When he got through with the business I asked him what was to pay, and he told me.

"Q. What did he say? A. $12. Q. Did you pay the money? A. I paid the mony right then on the spot. Q. Who did you pay it to? A. Judge Prindle."

This was in August, 1868, years after the fees were abolished. $12 was the old statute fee for all the papers and proceedings on proving a will. It is a clearly-proved case of demanding and receiving from a widow, more than 70 years, $12 fees, when he was not entitled to make any charge whatever.

3. Refusing to perform the services which it was his duty to perform.

Mr. RAY testifies as follows:

"Judge Prindle almost invariably said to these parties coming there: 'It is not my duty to draw these papers; Ray is here, a young lawyer, and he will do it for you.'

Again: "They came there to prove the will; I was in the back room busy, and Judge Prindle told them squarely he could not do the business, that it was not a part of his duties to do this business, and that they had better get an attorney to do it."

As before remarked, the surrogate was compensated by a salary instead of fees, but his duty to perform the services had never been changed. It was for those services that he received his salary.

4. Allowing one of his clerks to practice before him as attorney for parties to proceedings before him.

The Legislature abolished the fees for most of the services of the surrogate. It is presumed that the purpose of the Legislature was to relieve the people from the burden of those fees; but, instead of being a relief, it really increased their burdens. They were directly taxed for the surrogate's salary, for the allowance for the clerk hire and office expenses, and charged even larger fees than before for the specific services. The testimony shows, to my mind, very conclusively that Mr. Ray was in the surrogate's office in two capacities; he was there as *a* clerk (not *the* clerk), an assistant of the surrogate — one of several clerks — and he was there also as a lawyer after he was admitted to the bar. As a clerk he performed clerical service, had the private, confidential ear of the surrogate, and was perfectly familiar with the books, files, records and entries of the office. This is that sort of relation to the surrogate which the Legislature, with great propriety, classed with the intimate relations of partner and son, as disqualifying from practicing as a lawyer before the surrogate. That Mr. Ray, having no office but the surrogate's office, practiced as an attorney before the surrogate, is proved without contradiction.

A few extracts from the testimony will show that his relation to the surrogate and the business of his office was that of a clerk, an assistant in the business of the surrogate, all the time while he was practicing before him. Up to the time Mr. Ray was admitted there can be no doubt he was a clerk. He went into the office the 20th of March, 1866, and left it the latter part of 1871.

"Q. Under what arrangement did you first commence as a student in the office of Judge Prindle? A. I asked him if he had concluded that I could come in; he said I could come in and try it; he said he did not think I would stay a great while." (P. 788.) (It is not explained what he was to try and might not like.) "I made no

arrangement further than that. * * I stayed there without any further arrangement up to the time I left, with this additional arrangement; during the time Judge Prindle saw that I was what he called a fair penman, and he stated that he had wills that he wanted recorded, and whatever work he gave me to do in that line he paid me for it, and sometimes I did other copying, for which he paid me. * * When he wanted writing done he called my attention to it; I would take hold and do it and then he would pay me for it; I presume he hired me to do copying before I had been there a week. * * I think there was a month or two he told me he would give me $3 a week to do the writing while I was a student in the office. * * It didn't continue to exceed three months; I don't think it did two. * *

"Q. State what time you did the principal part of the judge's clerical work? A. During the time that I was in the office, from the time I entered it up till the time I was admitted, except when he had other students there, I did the principal part of it; since that time the greater part of it has been done by persons outside of the office, or students that he had in there; nice writing that he wanted done nicely I have done. * * * I have recorded since I was admitted up till last September (1871); I have recorded of letters testamentary about two-thirds; of the letters of administration a little more than half. (P. 790.)

"Q. Now, sir, when Judge Prindle was absent, who attended to the surrogate's duties? A. When he was gone away, to be absent any length of time, when there was no one else there, I usually did it myself; when any one came into the office I usually asked them what their business was, and if it was any thing I had authority from Judge Prindle to do, or could do, I would tell them that I could do it for them, and save them coming again. * * * After I was admitted I spoke about going away; Judge Prindle told me I could remain there if I wished; that it was a convenience to the public to have an attorney there. * * * He might have said this; it strikes me that he did say that I was so familiar with all the records and papers on file, that when people came there in his absence, that I could readily refer them to any book or paper in that office."

This shows how extensive, familiar and confidential was his clerkship to that office, and that he was continued in substantially the same capacity thereafter. "After August, 1871, I quit doing business there as I had done before; I drew papers in there and did business, but yet I stopped doing any thing as I had done before; I

stopped writing in the surrogate's book, unless it was on some extra occasion, perhaps; occasionally I did it." (P. 795.) "I did not go there any more than was necessary to show papers or things of that kind." (P. 797.)

In one case he says:

"I sent him citations at the request of Judge Prindle in that matter; Judge Prindle told him he would have the citations sent to him; Judge Prindle requested me to do it, and I did." (P. 797).

In another case he says:

"You did all the work of drawing the papers? A. Yes, or nearly all; Judge Prindle might have done some little in regard to it, perhaps; there might have been something done by him; I presume quite likely there was." (P. 780.)

He says also: "All that I ever did, in regard to the business connected with the surrogate's office, was this: when people came there to have business transacted, and the papers were not drawn, I almost always, not always, but almost always, would draw their papers and enter the orders in the surrogate's books, and pass the orders to Judge Prindle, who would sign them in the books; and in regard to the business which was done when Judge Prindle was away, I never did business in his absence, except he would be gone two or three days, and he would then say to me "if any one comes here with their papers drawn, and want letters of administration or letters of guardianship, or want citations to prove wills, I have left them signed; you can let them have the citations or the letters of administration, and put the return day on some return day that I have made in my book;" * * I never issued any letters of guardianship or administration, or any citations, when Judge Prindle was in the village, without going to him or seeing him; sometimes he would say to me, 'I can't go to the office, and you may go back and let them have their citations;' during the time I was in the office, after I was admitted, Judge Prindle had several students at various times; he never had a good writer; he never had a student who was a good penman, until Mr. Thomas came into the office in the spring of 1870, I think it was; those students that he had, Judge Prindle used to have record the wills, but they would make such bungling work, and Judge Prindle had a good deal of pride about it, and I saw it worried him, and whenever I had time and he had any work that was to be nicely done, I would take hold and help about the recording wills, etc.

"Judge Prindle almost invariably said to these parties coming

there: 'It is not my duty to draw these papers; Ray is here, a young lawyer, and he will do it for you.' (P. 796.)

"They came to prove the will; I was in the back room busy, and Judge Prindle told them squarely he could not do the business; that it was not a part of his duties to do the business, and that they had better get an attorney to do it. Judge Prindle came to me and wanted to know if I would come out and draw the papers for him. I told him I was busy then, and if he would commence and take the affidavits. He said he wanted to go away, and he would straighten out the matter after he got through; that he would take the affidavits and get some of the facts. Judge Prindle drew part of the petition; he commenced it. He put in the heading of it a few words, and then I drew the affidavit at the end of it, and they signed it with the understanding that they were to figure out the facts with me and tell them. They then figured up the facts, and then Thomas sat there, and I asked him if he would write it in the petition, and Thomas did so, and filled in the facts in the petition. I filled out the citations and copies. (Pp. 765, 766.) This was the middle of last year."

These extracts from the testimony show the mode of doing the business in this surrogate's office. The surrogate refused to do what it was his duty to do; turned the parties over to Ray, his clerk, who alone, or with the other clerks and the surrogate, drew up the papers; some one part and some another; made out the citations and completed the business, and fees were charged which were called Ray's fees as a lawyer. The contested cases before the surrogate are very few. There is rarely a dispute. Most of the business of the surrogate's office is merely clerical; the filling up of blanks, which are exceedingly simple, and the writing up the records. Mr. Ray testifies: "Where all the actual labor of the surrogate's office is, is in the miscellaneous record of wills; that is where the labor lies." (P. 794.)

He also testifies that in 1871 there were thirty-two wills proved, and thirty-three letters of administration issued. It is not quite certain, on the testimony, that this embraces more than ten and a half months of 1871; if not, then these numbers must be increased to about forty. In any event, less than two cases a week.

I have referred to these few particulars, confining myself to the testimony of Judge Prindle and Mr. Ray, simply to exhibit their mode of doing business; and, without going further into the testimony, it seems to me that no one can fail to be convinced that the business of this surrogate's office was purposely carried on in viola-

tion and evasion of the well-known statutes to which I have referred, and all for their own profit. In substance, he practiced law in his own court, for he permitted his clerk to practice law before him; sometimes he took the fees and sometimes the clerk took them. The surrogate always took the amount allowed by the county for clerk hire, and for it the clerk charged the parties for preparing the papers which it was the duty of the surrogate to prepare, and receive for it fees in excess of the legal surrogate's fees. There is no direct proof of an agreement of clerkship or partnership, but that they divided between them the duties, labors and fees of surrogate, lawyer and clerk is too evident to admit of a reasonable doubt. A remark was dropped, but no proof was given, that other surrogates had adopted similar practices. The more the worse for them all, and the more important it is that in this public, solemn and official manner, all such practices should be rebuked.

The power to remove is a remedial and beneficial one. Office is a trust for the benefit of the public solely, and when that trust is not fulfilled there should be a change of the trustee, no matter whether ignorance or inability, or personal or official misconduct may have interfered with the public interests. The removal has not necessarily any idea of punishment connected with it. It is merely displacing, for cause, an unfit officer that another may be substituted for him. I am compelled to vote according to the conclusions of this opinion.

Senator CHATFIELD — Mr. President: I move that any senator may have the privilege of changing his vote before the final vote is announced, after the vote is taken. I think that course was adopted in the impeachment trial. I make that motion.

The PRESIDENT submitted the motion of Senator Chatfield, and it was adopted.

The PRESIDENT *pro tem.* — Is the Senate ready to proceed with taking the vote? If so, the Clerk will read the first charge.

The CLERK read the first charge as follows:

"FIRST CHARGE.

"That the said Horace G. Prindle, being county judge of the said county of Chenango and State of New York, and, by virtue of his office, also surrogate of said county, unmindful of the duties of his said office and of his oath of office, and in violation of the Constitution and laws of said State, in numerous instances, during the years 1867, 1868, 1869, 1870 and 1871, at the town of Norwich, in the county of Chenango and State of New York, and continuously

during said years, has drawn petitions for the granting of letters of administration for the proof of wills, for the granting of letters of guardianship, notices of appeal and orders, applications and other papers, for the appointment of referees and commissioners in highway proceedings, petitions and papers for the sale of infants' real estate and other papers, knowing that the same were to be used by and before him as such county judge and surrogate, and has knowingly, corruptly and unlawfully demanded, received and extorted from the several persons for whom such papers were drawn, fees varying from two dollars to sixty dollars, for his personal services in drawing such papers as aforesaid, so to be used before him in his official capacity."

The PRESIDENT then put the question to each member of the Senate, as follows:

"Senator, how say you, is the first item of the charges preferred against the accused proven?"

When each senator rose in his place, and responded as follows:

Senator MURPHY — Mr. President: Before the vote is taken, or before my name is called, I wish to say to the Senate that, at the time this trial was had before this body, I was unwell and unable to be here. I have not had an opportunity to read the testimony in the case. I therefore ask, sir, that I may be excused from voting upon the different charges in this case.

The question was submitted to the Senate on the request of Senator Murphy to be excused from voting, and it was carried.

Senator SCORESBY — Mr. President: Before my name is called, I wish to ask to be excused from voting on the case of Judge Prindle, for the reason that I was not a member of this honorable body when the charges were made against him, and the case had made considerable progress before I took my seat.

The question was submitted on the request of Senator Scoresby to be excused from voting, and it was carried.

Senator JOHNSON — Mr. President: Having been absent a portion of the time during the trial of this case, hearing only a portion of the testimony, and not having had the time to read it thoroughly and carefully, I feel myself not qualified to vote upon the various charges; therefore I ask to be excused from voting on the various charges.

Senator LEWIS — Mr. President: I believe we have twenty-five or twenty-six senators here; it requires twenty-two affirmative votes to convict the respondent upon either of these charges. Now, while we have excused Senator Murphy, it is better to reconsider that

vote. While he was not here at the time this testimony was taken, he has had sufficient time to look over the testimony; it is all printed, and the arguments of counsel. So far as the senator from the twenty-sixth is concerned, I cannot see the propriety of excusing him; for, if we do that, it reduces the number to precisely twenty-two, unless some have come in since we counted. Hence I am opposed to excusing the senator from the twenty-sixth, and I am in favor of reconsidering the vote by which we excused Senator Murphy.

Senator ROBERTSON — Mr. President: I desire to inquire whether the motion to excuse Senators Murphy and Scoresby applies to the final vote or upon the charges.

The PRESIDENT — Only upon the charges.

Senator ROBERTSON — Mr. President: I desire to inquire of the senator from the twenty-sixth what portion of the testimony he did not hear? I am inclined to vote for excusing him so far as he did not hear; the portions that he did not hear I should be glad to know.

The PRESIDENT — It would be difficult for the senator to state what he did not hear.

Senator JOHNSON — Mr. President: With the assent of the senate I will read that portion that I did not hear.

Senator CHATFIELD — Mr. President: I hope the senator from the twenty-sixth will be excused from reading the testimony in the case.

Senator ROBERTSON — Mr. President: I hope not, because I wish to move that he be excused from voting on that portion.

Senator JOHNSON — Commencing on the twenty-fifth page of the testimony, without troubling the senate or asking their indulgence to read it, I will look and give the pages I did not read.

Senator ROBERTSON — I merely desire to know the days he was absent or present, Mr. President, and on that part of it I should be willing to excuse him from voting.

Senator JOHNSON — Mr. President: I am unable to say when I was here or absent. I was present at the summing up of the case and heard the argument of the counsel on either side, but, as I say, the case has been so long deferred while I had information in regard to the charges at the time, they have now substantially escaped me, and I am all unprepared to vote intelligently upon the various charges, and for that reason it does seem to me very much like tossing a copper, and the vote, not being dictated by that intelligent knowledge that should govern every senator in giving his vote in so important a case. As the Senate has already excused two members, which is all right and proper, Senator Murphy not being present at

all, and Senator Scoresby but a very small portion of the time, it seems right and proper that they should be excused.

Senator WINSLOW — Mr. President: If my recollection serves me, the senator was ready and eager to vote upon these charges this morning at 11 o'clock; and if his memory has failed him since that time, I think he ought not to be excused.

The question was submitted on the request of Senator Johnson to be excused from voting, and it was declared lost.

The CLERK proceeded to call the roll, and when Senator ADAMS' name was called, he arose and said:

Mr. President: Believing that the papers mentioned in the first charge were not drawn up by Judge Prindle himself, but by a gentleman in his office, and understanding, from conversation with several legal gentlemen upon that point, that Judge Prindle was not obliged to draw up these papers, the judge getting some other person to draw the papers, he not to receive pay for it, I do not see how I can vote against the judge upon this charge, and therefore I vote not proven.

The PRESIDENT *pro tem.*— With a view of shortening the case, the same formal announcement to each senator will not be repeated, but simply the question, "How say you?"

When Senator ALLEN's name was called, he arose and said:

Mr. President: If I recollect aright, and if I do not, I trust some of the senators will correct me in my recollection, some part of the papers that are referred to in this charge were admitted by Judge Prindle as having been drawn by himself, and to have received payment for rendering that service; I refer especially to the proceedings with reference to the appointment of referees and commissioners in highway proceedings.

Senator ROBERTSON — Will the senator state the page?

Senator ALLEN — I am not able to state the page; by calling the attention of the senators to it, I thought, perhaps, some one might be able to inform me what the evidence was in reference to that particular charge; as I understand this charge, it charges Judge Prindle with having drawn these papers, and having received pay for drawing them, and I think in that particular case Judge Prindle admitted the fact; I may be mistaken, however, in my conclusions with reference to it, and I call the attention of the senators to the fact; I am relying only upon my recollection; I have not looked up the evidence with reference to that matter.

Senator LEWIS — May I ask the senator a question?

Senator ALLEN — Certainly.

Senator LEWIS — I have not looked at the evidence since it was taken, but my recollection is that Judge Prindle testified that there was some legal question connected with it outside, entirely, of his duty as a county judge; that the person desired him to investigate that question; he did investigate, and charged, I think, $10 for his services, but denied that he had charged any thing; I am not certain; my recollection is that he did not draw any papers; he said he charged nothing for drawing the papers, but his entire charge was for his counsel fee in examining legal questions; that it was not submitted to him as a judge at all, which he examined at great length.

Senator ALLEN — Mr. President: With a view to looking up that testimony, and under the arrangement or rule adopted by the Senate, giving to members the right to change their votes with reference to any of these charges, I shall vote not proven on this charge, with a view of taking time to look up the testimony with reference to that particular part of the matter to which I have alluded.

When Senator DICKINSON's name was called, he arose and said:

Mr. President: For the same reasons that were stated by Mr. Adams, I vote not proven.

When Senator PERRY's name was called, he arose and said:

Mr. President: Not proven as to that part of the charge charging that he corruptly and unlawfully demanded, received and extorted fees for his services.

Proven — Messrs. Benedict, Chatfield, Cock, Johnson, Tiemann — 5.

Not proven — Messrs. Adams, Allen, Baker, Bowen, Dickinson, Foster, Graham, Harrower, Lewis, McGowan, Palmer, Perry, Robertson, Wagner, Weismann, Winslow, J. Wood, Woodin —18.

The CLERK read the second charge, as follows:

"SECOND CHARGE.

That the said Horace G. Prindle, being such county judge and surrogate of the county of Chenango and State of New York, at the town of Norwich, in the county aforesaid, unmindful of the duties of his said office and of his oath of office, and in violation of the Constitution and laws of said State, during the years 1867, 1868, 1869, 1870, 1871 and 1872, has willfully, unlawfully and corruptly refused

to perform the duties of his said office in this, to wit: While he, the said county judge and surrogate, during said years and each of them, has been paid a salary by the said county of Chenango, for himself and for a clerk to himself, as such surrogate, and while it is now and has been during said years, or the most part thereof, the official duty of said county judge and surrogate, to draw, or cause to be drawn, all petitions and other papers for the granting of letters of administration, and for the proof of wills, and the granting of letters testamentary thereon, and for the issuing of letters of guardianship, free of charge to applicants therefor, in order that he might take to himself, for his own private gain and advantage, the sum so paid by the said county for the hire or salary of a clerk to said surrogate, has willfully, unlawfully and corruptly declined to perform said duties himself, and has repeatedly referred such applicants as aforesaid to one George W. Ray (who was at the time and times such applications were made, and during said years, a clerk in the office of said surrogate, and performed the duties of a clerk to said surrogate), knowing that the said George W. Ray was intending, after performing such duties of the said surrogate, to charge such applicants therefor as an attorney and counselor at law, and has corruptly, knowingly and unlawfully aided, assisted and encouraged the said George W. Ray, to demand, receive and extort, and has for the said Ray demanded, received and extorted from such applicants, in matters pending before said surrogate, large sums of money, thus defeating the object and intent of the law abolishing the fees of surrogates, and corruptly taking to himself the amount so paid for clerk hire of the surrogate by the said county, and corruptly encouraging, aiding and assisting said George W. Ray, in extorting from such applicants sufficient to remunerate him for his services as an attorney and counselor at law, and also as a clerk to him, the said surrogate."

The PRESIDENT put the question to each member of the Senate, as follows:

"Senator, how say you, is the second item of the charges preferred against the accused proven?"

The CLERK proceeded to call, when each senator rose in his place, and responded as follows:

When Senator ADAMS' name was called, he arose and said:

Mr. President: This applies particularly, I believe, to the fact of whether Mr. Ray was a clerk in the surrogate's office or not. My recollection of the testimony is, that it has not been proven that he

was a clerk of the surrogate. So far as that is concerned in this trial, I shall vote not proven; the balance of the charge I shall vote proven. I cannot tell how it will be divided. So far as his assisting Geo. W. Ray in procuring business, and in charging applicants for business pertaining to the office of surrogate, I believe that has been proven; but, as to the fact of Geo. W. Ray being a clerk in the office, I vote not proven.

The PRESIDENT *pro tem.*— The senator must take the charge as it is, and vote proven or not proven.

Senator ADAMS'— Then I shall vote not proven.

When Senator ALLEN'S name was called, he arose and said:

Mr. President: Understanding this question involves substantially the question of whether Ray was a clerk in the office of surrogate of the county of Chenango, and, believing that the evidence shows the fact that he was, I vote proven.

When Senator LEWIS' name was called, he arose and said:

Mr. President: Believing that the clerk mentioned in the statute is the statutory clerk, and not the mere clerk who happens to be in the office of the surrogate, and believing, further, that there is very great doubt as to whether he was even a clerk in the surrogate's office, and believing, further, that there has been no extortion, so far as the charges of Ray were concerned, and that, in fact, he has done the business very cheaply for those who employed him, and at a less price than the same services could have been procured from other attorneys, I vote not proven.

When Senator PALMER'S name was called, he arose and said:

Mr. President: If my memory of the testimony is correct, the only ground of a charge that Ray was clerk was, that he occupied the office; and to rebut that charge, he proved that he had a sign out and was a practicing lawyer there. If I am correct in that, and the testimony of Ray was direct, that he was a practicing lawyer, occupied that office and had not been clerk for some time, I must vote not proven. We have his own testimony and the testimony of Judge Prindle that he was not clerk, and no books shown and no testimony that he was a clerk.

When Senator PERRY'S name was called, he arose and said:

Mr. President: I fully indorse the remarks of the senator who was last up, also of the senator from the thirty-first in reference to this question, as to whether Mr. Ray was in fact a clerk. I presume it will be conceded all around the circle that the accused is entitled to the benefit of every reasonable doubt, and I venture to say that at least nine out of ten lawyers, while reading the testimony in this

case, will tell you, in accordance with all privileges of law, there is no proof in this case to establish the fact that Ray was a clerk, such as is known in the law; it is said there is some proof of it, and some will say that he was, but there is a large number who say it is not proved, and, therefore, we have the fact here, that there is great doubt as to whether Ray was a clerk; then what is our clear duty here? Certainly to give the accused the benefit of this doubt; I have no doubt in my own mind at all of the fact that Mr. Ray, according to the proof in this case, was not a clerk; it is conceded that he was not a statutory clerk; that I understand to be conceded; now, was he a clerk of the accused or of the surrogate, as we understand that appellation to exist in the law? What is a clerk? If I understand the rule, a clerk is an individual in the employ of another, or, his relations to his employer are such that the employer can command his services at all times; I think it is a proposition that no lawyer will dispute—no intelligent lawyer; is there any proof in this case, from beginning to end, to show that Judge Prindle at any time sustained that relation to Ray, such as to enable him to command the services of Ray? Is there any proof? Any contract? Was it not in the power of Judge Prindle, the accused, to turn Ray out of the office at any time? And could Ray have brought an action against the accused for damages, for turning him out on a contract for hire? Believing that he was not a clerk, and that there is no proof of that fact, I vote not proven.

When Senator ROBERTSON's name was called, he arose and said:

Mr. President: Until the conversation commenced here to-day, I was of the opinion that Mr. Ray was a clerk. He was in the office, in the surrogate's office, and had a desk there and was practicing law; he had a sign at the entrance of the surrogate's office, "attorney and counselor at law;" but at the same time the evidence shows that he recorded wills and other papers required to be recorded by statute, so that I thought he performed clerical duties, and that made him a clerk; but when I heard the explanation of the senator from the thirtieth (Mr. James Wood), in regard to the term clerk, I became satisfied that the statute referred to that class of business known, before the present Constitution, as clerks in lawyers' offices, became so by reason of entering as clerks there. I therefore vote not proven.

When Senator TIEMANN's name was called, he arose and said:

Mr. President: I believe fully, sir, that he was a clerk in that office; I do not believe he was the surrogate's clerk, but *a* clerk, and I believe he was assisted in that office, and therefore I shall vote proven.

When Senator WEISMANN'S name was called, he arose and said:

Mr. President: Having doubt in my mind whether Mr. Ray was a clerk, I give the benefit of this doubt to the respondent. I vote not proven.

Proven—Messrs. Allen, Benedict, Chatfield, Cock, Johnson, Tiemann, Wagner—7.

Not proven—Messrs. Adams, Baker, Bowen, Dickinson, Foster, Graham, Harrower, Lewis, Lowery, McGowan, Palmer, Perry, Robertson, Weismann, Winslow, J. Wood, Woodin—17.

The CLERK read the third charge, as follows:

"THIRD CHARGE.

"That the said Horace G. Prindle, being such county judge and surrogate as aforesaid, at the town of Norwich, in the said county of Chenango, at numerous times during the years 1867, 1868, 1869, 1870 and 1871, having one George W. Ray, a clerk in his office and performing the duties of a clerk to said surrogate, unmindful of the duties of his said office and of his oath of office, and in violation of the Constitution and laws of said State, willfully and corruptly devising a mode by which he could take and appropriate to himself the moneys paid by the said county of Chenango for the hire of a clerk to the said surrogate, has repeatedly and in numerous instances, in order that he might remunerate the said George W. Ray for the services performed by him as such clerk to said surrogate, instead of paying the salary appropriated therefor by said county and paid to said surrogate for that purpose, appointed the said George W. Ray special guardian or guardian *ad litem* of infants interested in proceedings pending before said surrogate, he knowing at the time that said Ray was employed as the attorney and counsel of parties in such proceedings who were interested adversely to the interests of such infants, and has repeatedly and in numerous instances collected from the executors and administrators of estates for the said George W. Ray, the sum of ten dollars as a fee to said Ray as special guardian or guardian *ad litem* as aforesaid, knowing that in the same case large fees were also paid said George W. Ray for his services as an attorney and counselor at law for parties interested adversely to said infants; all while the said George W. Ray was acting and performing the duties of a clerk to him the said surrogate."

The PRESIDENT put the question to each member of the Senate, as follows:

"Senator, how say you, is the third item of the charges preferred against the accused proven?"

When each senator rose in his place, and responded as follows:

Not proven — Messrs. Adams, Allen, Baker, Benedict, Bowen, Chatfield, Cock, Dickinson, Foster, Graham, Harrower, Johnson, Lewis, Lowery, McGowan, Palmer, Perry, Robertson, Tiemann, Wagner, Weismann, Winslow, J. Wood, Woodin—24.

The CLERK read the fourth charge, as follows:

"FOURTH CHARGE.

"That the said Horace G. Prindle, being such county judge and surrogate of the said county of Chenango, at the town of Norwich, in said county of Chenango, at various times during the year 1872, unmindful of the duties of his said office and of his oath of office, and in violation of the Constitution and laws of said State, has repeatedly and willfully refused to perform the duties of his said office, to draw or cause to be drawn the necessary petitions and papers for the proof of wills, granting the letters of administration and letters of guardianship, and petitions for the final settlement of the accounts of administrators and executors in the case of estates of deceased persons dying in said county, and such proceedings coming exclusively within the jurisdiction of said surrogate, and such services being a part of his official duty, as such surrogate, to perform or cause to be performed, free of charge."

The PRESIDENT put the question to each member of the Senate, as follows:

"Senator, how say you, is the fourth item of the charges preferred against the accused proven?"

When each senator rose in his place, and responded as follows;

Proven — Messrs. Benedict, Chatfield, Cock, Johnson, Lowery, Tiemann, Wagner — 7.

Not proven — Messrs. Adams, Allen, Baker, Bowen, Dickinson, Foster, Graham, Harrower, Lewis, McGowan, Palmer, Perry, Robertson, Weismann, Winslow, J. Wood, Woodin — 17.

The CLERK read the fifth charge, as follows:

"FIFTH CHARGE.

"That the said Horace G. Prindle, being such county judge and surrogate of the county of Chenango aforesaid, at the town of Norwich, in said county, and the will of one Anna W. Barrows having been duly admitted to probate by and before said surrogate, and letters testamentary issued thereon to Austin Barrows as executor, unmindful of the duties of his said office and of his oath of office, and in violation of the Constitution and laws of said State, in or about the month of February, 1869, unlawfully and corruptly suffered

and allowed himself to be employed as the attorney of said executor, as such, and as his said attorney commenced an action in the Supreme Court of the State of New York, wherein said Austin Barrows, as executor, was plaintiff, and certain legatees in said will named, to wit, The Congregational Church of Columbus, Chenango county, New York, and The American Board of Commissioners of Foreign Missions, The American Home Missionary Society, The American Bible Society, Mrs. Eleanor P. Higgins, Mrs. Delia Hunt, Mrs. Augusta Matterson, Mrs. Margaret Storrs, Mrs. Sarah Williams, Gardner Barrows and others, were defendants, which action was brought for the construction of said will, and the sale of the real estate of the said deceased for the payment of legacies, and that the said county judge and surrogate, as such attorney as aforesaid, and without other service upon the defendants in said action, or either of them, procured one George W. Ray, then a clerk in the office of the said surrogate and performing the duties of clerk to said surrogate, and being an attorney and counselor at law, to appear as attorney in said action for each and all of the said defendants, and as is alleged, upon information and belief, without authority from said defendants or either of them, and upon a stipulation signed by his said clerk as such attorney for the defendants, obtained a judgment and decree in said action, in accordance with the relief prayed in the complaint therein, and in such judgment drawn in his own hand the said county judge and surrogate inserted an order that he, the said executor, should pay to himself, out of said estate, the sum of $350, as his costs and disbursements in said action, and willfully, corruptly and unlawfully obtained and extorted from said executor, and from said estate so under his own jurisdiction as surrogate as aforesaid, the sum of $350, and, in addition thereto, required the said executor of said estate to pay to his said clerk, George W. Ray, and corruptly and fraudulently and unlawfully audited, as surrogate, in the account of said executor, the payment to said Ray of the sum of fifty dollars for his services as attorney for the defendants in said action, and that said sum of $350 was so obtained by said surrogate, at Norwich, in said county, on or about the 12th day of November, 1869, and corruptly audited by him as such surrogate in the final account of said executor.

The PRESIDENT put the question to each member of the Senate, as follows:

"Senator, how say you, is the fifth item of the charges preferred against the accused proven?"

When each senator rose in his place, and responded as follows:

When Senator ADAMS' name was called, he arose and said:

Mr. President: Proven, without implied corruption.

When Senator BAKER's name was called, he arose and said:

Mr. President: I vote the same as Senator Adams, without implied corruption.

When Senator BOWEN's name was called, he arose and said:

Mr. President: I regard the very gist of this article as the corruption; and when you say there is no corruption or even intent, then the article itself must fall to the ground. I therefore vote on that ground, agreeing with my friends, not proven.

When Senator ROBERTSON's name was called, he arose and said:

Mr. President: Proven with the exception that his conduct is not shown to be corrupt.

When Senator WINSLOW's name was called, he arose and said:

Mr. President: Proven, qualifying it without any corrupt intent.

When Senator JAMES WOOD's name was called, he arose and said:

Mr. President: Senators seem to have forgotten that one of the worst charges in this article was disproved; and yet they are voting now that it was all proven. One of the darkest features of this charge is, that the respondent procured Ray "then a clerk in the office of the said surrogate and performing the duties of clerk to said surrogate, and being an attorney and counselor at law, to appear as attorney in said action for each and all of the said defendants, and, as is alleged on information and belief, without authority from said defendants, or either of them, and upon a stipulation signed by his said clerk as such attorney." It was distinctly proved before us by the production of the papers, that Mr. Ray was employed and retained by every person he appeared for by a retainer in writing to appear and answer in this case. Therefore, I do not see how anybody can vote any other way than I do, that that article in its scope and meaning is not proven.

Senator ROBERTSON — Mr. President: I desire to modify my vote, after the remarks of the senator from the thirtieth (Mr. James Wood). I think he is correct in regard to the statement he has made in reference to Mr. Ray, that has been disproved. What I intended to say by my vote was this: that the statute prohibits a surrogate from appearing as attorney or counsel for an executor. That Judge Prindle did do. He stated upon the stand that he was not conscious of doing wrong by that act; therefore I meant to say by my vote that his conduct in acting as attorney for the executor in that case was unlawful, but that he did not act corruptly.

Senator WOODIN — Mr. President: So far as the senator goes, I can go. The testimony abundantly supports a charge of that kind, if that was the extent and scope of the charge, but there is so much in this article, so much that is grouped together, that if I should vote proven upon it, the logic of that vote would compel me to remove him from office, and therefore I take the charge as it is presented to me, and the testimony does not sustain that charge, but there is enough to sustain another and lesser charge. The charge, as drawn, is an exceedingly embarrassing one, because it is perfectly obvious, it is conceded on all parts, that here has been an irregularity, violation of the statute, by consenting to appear as an attorney. So far I agree with the senator, and we all agree; but when they group together so much and make a charge involving great moral turpitude that the evidence does not support, and present it to me to say proven or not proven, I must say it is not proven as presented.

Senator BENEDICT — Mr. President: I do not understand that portion which the senator alludes to is the proper charge at all. If you are going to punish Mr. Ray, that is very material; but you do not propose to punish Mr. Ray.

Senator JAMES WOOD — May I ask the senator a question?

Senator BENEDICT — Certainly.

Senator JAMES WOOD — Is not the charge that the respondent procured Ray to appear without authority? That is the charge.

Senator BENEDICT — The true charge under this article is that Judge Prindle appeared there as a lawyer in an executor's case, in violation of the statute; that is all there is about it; those matters furnished in there do not affect that question in the slightest degree; that is my view of it.

Senator WINSLOW — Mr. President: Giving the same reasons, substantially, as advanced by Senator Robertson, I desire to vote not proven.

Proven — Messrs. Adams, Allen, Baker, Benedict, Chatfield, Cock, Dickinson, Johnson, Lowery, Palmer, Roberston, Tiemann, Wagner, Weismann — 14.

Not proven — Messrs. Bowen, Foster, Graham, Harrower, Lewis, McGowan, Perry, Winslow, J. Wood, Woodin — 10.

The CLERK read the sixth charge, as follows:

"SIXTH CHARGE.

"That the said Horace G. Prindle, being such county judge and surrogate of the county of Chenango at the town of Norwich, in the

county aforesaid, on or about the 5th day of March, 1868, the will of Edward Murphy, deceased, having been duly admitted to probate by and before said surrogate, unmindful of the duties of his said office and of his oath of office, and in violation of the Constitution and laws of said State, corruptly and unlawfully entered into an agreement with one John Murphy, son of said deceased, by which he, the said surrogate, agreed to use his influence to induce one Dr. Thomas Dwight, executor named in said last will and testament, to resign his said trust in order that said John Murphy might be appointed administrator of said estate with the will annexed, and that in pursuance of said contract, said surrogate procured and induced said Dr. Thomas Dwight to resign his said trust and for and on account of said services, the said surrogate corruptly received, in or about the month of March, 1868, from said John Murphy, the sum of fifty dollars; and that for his services in and about the proof of said will and the granting of letters of administration with the will annexed, to said John Murphy, upon said estate, he, the said surrogate, at the same time and place, corruptly and unlawfully demanded, received and extorted from said John Murphy, administrator as aforesaid, the sum of eighty dollars, said surrogate being legally entitled to a small part only, if to any part of the same, as his lawful disbursements on account of said matter."

The PRESIDENT put the question to each member of the Senate, as follows:

"Senator, how say you, is the sixth item of the charges preferred against the accused proven?"

When each member rose in his place, and responded as follows:

Proven—Messrs. Chatfield, Tiemann—2.

Not proven—Messrs. Adams, Allen, Baker, Benedict, Bowen, Cock, Dickinson, Foster, Graham, Harrower, Johnson, Lewis, Lowery, McGowan, Palmer, Perry, Robertson, Wagner, Weismann, Winslow, J. Wood, Woodin—22.

The CLERK read the seventh charge, as follows:

"SEVENTH CHARGE.

"That, at the town of Norwich, county of Chenango and State of New York, between the 23d day of November, 1869, and the 1st day of April, 1870, Horace G. Prindle, then being county judge of said county of Chenango, unmindful of the duties of his said office and of his oath of office, and in violation of the Constitution and laws of said State, did, willfully, corruptly and unlawfully, take

and receive a large sum of money and other property, the value of which is unknown, for and on account of services rendered by him as such county judge, in the matter of the decision of the application of certain tax payers of the town of Greene, in said county, to have said town adjudged bonded in aid of the Greene Railroad Company, in pursuance of chapter 907 of the Laws of 1869, for the State of New York."

The PRESIDENT put the question to each member of the Senate, as follows:

"Senator, how say you, is the seventh item of the charges preferred against the accused proven?"

When each senator rose in his place, and responded as follows:

Not proven—Messrs. Adams, Allen, Baker, Benedict, Bowen, Chatfield, Cock, Dickinson, Foster, Graham, Harrower, Johnson, Lewis, Lowery, McGowan, Palmer, Perry, Robertson, Tiemann, Wagner, Weismann, Winslow J. Wood, Woodin—24.

Senator WINSLOW—Mr. President: I move that when the Senate adjourn to-night, it adjourn to meet to-morrow morning at 10 o'clock. I make this motion that we may get at this matter a little earlier.

Senator JAMES WOOD—Mr. President: I move to amend that the business now under consideration be made a special order for to-morrow at 3 o'clock.

Senator ROBERTSON—Mr. President: I think the legislative session to-morrow will close by 12 o'clock; we might take this up then.

Senator JAMES WOOD—Mr. President: I will amend my amendment, so that it will read, that the business under consideration be made a special order for to-morrow, immediately after legislative business for the day is disposed of.

Senator WINSLOW—Mr. President: I am perfectly willing to accept so much of the amendment as the honorable senator from the thirtieth suggests, that we take this matter up immediately after legislative business; but I desire, in view of the fact that we have got this extra business on hand to-morrow, to commence the session one hour sooner to-morrow, that we may get it through. Ten o'clock is not a very early hour.

Senator ROBERTSON—I hope not. We will have plenty of leisure for the next ten days.

Senator MURPHY—Mr. President: The amendment is not germain.

Senator WINSLOW—I rise, Mr. President, to a point of order, that it is entirely a different motion; it is not germain; it is not made as a substitute.

The PRESIDENT—The Chair will hold the amendment is not germain to the subject.

Senator ROBERTSON—I move it then as a substitute.

Senator WINSLOW—Mr. President: I move to amend, that the session to-morrow morning commence at 10 o'clock.

Senator ROBERTSON—Mr. President: I rise to a point of order. That motion is not germain.

The PRESIDENT—The point of order is well taken. The question is upon the substitute offered by the senator from the ninth—that this matter be made a special order immediately after the close of legislative business.

Senator MURPHY—Mr. President: I would like to know, if this is substituted in the place of the other motion, whether the other motion can be made at all. If this is substituted, as I understand it, in place of the motion of the senator from the twenty-eighth, the senator from the twenty-eighth can't make the motion at all; therefore I rise to a point of order; you cannot make a substitute in that way; I am in favor of both motions.

Senator ROBERTSON—I never supposed the senator rode two horses before.

Senator MURPHY—I say there is not two horses; I am in favor of commencing the session at 10 o'clock, and they are perfectly consistent.

Senator ROBERTSON—Mr. President: I admit the senator was right.

The question was submitted to the Senate, on the motion of Senator Robertson, and it was decided lost.

Senator JAMES WOOD—Mr. President: I now move that the business now under consideration be made a special order for to-morrow, immediately after the legislative business for the day is disposed of.

The question was submitted on the motion of Senator J. WOOD, and it was declared carried.

Senator WINSLOW—Mr. President: I move that when the Senate adjourn to-night, it be to meet to-morrow morning at 15 minutes past 10.

Tht question was submitted on the motion of Senator WINSLOW, and it was lost.

Senator LOWERY — Mr. President: I move the Senate do now adjourn.

The question was submitted on the motion of Senator LOWERY, and it was lost.

The CLERK read the eighth charge, as follows:

"EIGHTH CHARGE.

"That the said Horace G. Prindle, being such county judge of the said county of Chenango, unmindful of the duties of his said office and of his oath of office, habitually postpones and neglects to decide motions and appeals made and pending before him as such county judge, and during the years 1865, 1866, 1867, 1868, 1869, 1870, 1871 and 1872, has, in numerous cases, delayed and postponed and neglected the decision of motions and appeals made before him as such county judge from two to four years after argument and submission of such motions and appeals, in violation of the Constitution and laws of said State, and to the great delay, scandal and disgrace of the administration of justice in said county."

The PRESIDENT put the question to each member of the Senate, as follows:

"Senator, how say you, is the eighth item of the charges preferred against the accused proven?"

When each senator rose in his place, and responded as follows:

Not proven — Messrs. Adams, Allen, Baker, Benedict, Bowen, Chatfield, Cock, Dickinson, Foster, Graham, Harrower, Johnson, Lewis, Lowery, McGowan, Palmer, Robertson, Tiemann, Wagner, Weismann, Winslow, J. Wood, Woodin—23.

The CLERK read the ninth charge, as follows:

"NINTH CHARGE.

"That the said Horace G. Prindle, being such county judge and surrogate of the said county of Chenango, and State of New York, on the 27th day of November, A. D. 1871, at the town of Norwich, in the said county, the board of supervisors of the said county of Chenango having duly assembled according to law, and being then in session at the court-house in said county, and the said Horace G. Prindle having been duly subpœnaed to appear before said board at the time and place aforesaid, and by such subpœna commanded to appear as aforesaid, to be examined as a witness and as such officer in relation to the discharge of his duties as such county judge and surrogate, and as to the receipt and disbursement by him, as such

county judge and surrogate, of moneys belonging to the said county of Chenango, and also concerning the possession and disposition by him, as such county judge and surrogate, of property belonging to said county, and also commanding such county judge and surrogate to produce on such examination certain books, papers and documents then in his possession and under his control as such officer, and relating to the affairs and interests of said county, and to the receipt and disbursement by such county judge and surrogate of moneys of said county in his official capacity, to wit: A record book containing the record of wills proved before said surrogate, and the petitions for the proof of wills and for the granting of letters of administration and guardianship used before and filed in the office of said surrogate, and he, the said county judge and surrogate, in obedience to said subpœna, having appeared before said board of supervisors, and having been duly asked and required to answer the following questions, to wit: "Have you kept, during your term of office, a record of wills proved in your office?" Also, "Will you produce the records of wills proved in your office during your term of office?" "Will the witness produce the papers mentioned?" (Meaning thereby the papers mentioned in the subpœna aforesaid.) Also, "During the last four years, in whose handwriting have the records of the office of surrogate of Chenango county been kept?" And, also, "During the last four years have you received fees for drawing papers to be used before you as surrogate?" "Will you produce the petitions on file in the office of the surrogate of Chenango county?" To each and every of which questions and requirements the said county judge and surrogate, in violation of his oath of office and of the Constitution and laws of said State, and in contempt of the power and authority and lawful requirements of said board of supervisors, willfully, corruptly and unlawfully refused to answer and perform."

The PRESIDENT put the question to each member of the Senate, as follows:

"Senator, how say you, is the fourteenth item of the charges preferred against the accused proven?"

When each senator rose in his place, and responded as follows:

When Senator ADAMS' name was called, he arose and said:

Mr. President: Whether the supervisors had any right to bring the judge before them or not I cannot say. The charge was, I believe, admitted and proven, without any corruption, however. I vote proven without corruption.

When Senator BAKER'S name was called, he arose and said:

Mr. President: It is admitted by Judge Prindle that he did refuse to make these answers, but I am not prepared to say that he corruptly and unlawfully refused, and, therefore, I must say not proven.

When Senator J. Wood's name was called, he arose and said:

Mr. President: It seems to me, in view of the statute, (and I trust senators will look at it and see what its object and intent is,) that the proceedings which the board of supervisors undertook to prosecute under it, for the purpose which was awoved, was clearly unauthorized, and that a fair construction of the statute would not justify the course that was pursued; Judge Prindle, at all events, so understood it. He was so advised by counsel. He refused to answer the questions propounded for the purpose of enabling the board to resort to the remedy which the statute provides, so that the judgment of the Supreme Court might be obtained to determine whether he was or was not bound to answer. He acted fairly and honestly, and, it seems to me, judiciously. It seems to me that the gist of this charge is not proven, to wit, that he corruptly refused to answer. He asked his pursuers to take the question before the Supreme Court, and expressed a willingness to abide by its decision of the question whether he was bound to answer. If the court decided against him then the was ready and willing to answer; therefore, I vote not proven.

Senator ALLEN—Mr. President: If the senator will allow me a question for a moment; in what other way could the board of supervisors make the settlement which they are required by law to make with the county judge, with reference to fees received by him, except by calling him before them and making him answer?

Senator JAMES WOOD—Perhaps none. But, I hold that the statute in question does not authorize a board of supervisors to summon a county judge before them and examine him in respect to his official conduct and actions. In my judgment, the statute refers to a different class of officers, not judicial.

Senator ALLEN—I suppose this was put upon the ground, by the board of supervisors, that he has duties in receiving fees, or administrative duties, that they have a right to inquire into.

Senator JAMES WOOD—Was not the course the judge pursued a proper one when he said, "go before the Supreme Court and let that court decide the question, and I will abide by its decision?"

Senator ALLEN—Perhaps it may have been. My view of it is that he ought to have answered it.

Proven—Messrs. Adams, Allen, Benedict, Chatfield, Cock, Dickinson, Harrower, Johnson, Lowery, McGowan, Tiemann, Wagner, Weismann—13.

Not proven—Messrs. Foster, Lewis, Palmer, Perry, Robertson, Winslow, J. Wood—7.

The CLERK read the tenth charge, as follows:

"TENTH CHARGE.

"That the said Horace G. Prindle, being such county judge and surrogate of the said county of Chenango, at various times during the years 1868, 1869, 1870 and 1871, at the said town of Norwich, in the county of Chenango aforesaid, unmindful of the duties of his said office and of his oath of office, and in violation of the Constitution and laws of said State, in numerous instances, proceedings having in such instances been duly instituted before him as such surrogate for the proof of wills of deceased persons, has granted orders and made decrees in such proceedings requiring the executors of such wills to pay to the attorneys and counsel employed by the proponents and contestants of such wills, out of the estates under their control, large sums of money as counsel fees, varying in amount from $100 to $500 to one counsel, and amounting in many cases to more than $1,000 out of a single estate, as such counsel fees, making such orders and decrees in favor of attorneys who were unsuccessful in the matter in which such orders and decrees were made, and making such orders in favor of one George W. Ray, who was at such time and times a clerk in the office of said surrogate, and was, while such clerk, unlawfully allowed by said county judge and surrogate to practice as an attorney and counselor at law before said surrogate."

The PRESIDENT put the question to each member of the Senate, as follows:

"Senator, what say you, is the sixteenth item of the charges preferred against the accused proven?"

When each senator rose in his place, and responded as follows:

When Senator ALLEN'S name was called, he arose and said:

Mr. President: I vote not proven. I desire to say in connection with this, in explanation of the vote which I give, that I do understand that Ray was a clerk of this respondent, and to that extent I regard this charge as proven, if that is the gist of this charge—

Senator JAMES WOOD—The gist of the charge is in making the allowance.

Senator ALLEN — I so understand it, and with that understanding I vote not proven.

When Senator BENEDICT's name was called, he arose and said:

Mr. President: I put my vote of not proven on this charge on the ground that these allowances, where all the parties were before the court — the counsel of the various parties — that they are competent to agree as to the allowances which should be given by the surrogate, and that that has been the practice so long that I should not hold. I think that there has been a decision somewhere that the surrogate has not any such power, and I think the surrogate in New York has relinquished the power in consequence of that decision, but up to that day it was the common understood law by the surrogate that, where the parties were there and agreed to it, that it was competent for a surrogate to make a reasonable allowance of fees, and, therefore, I vote not proven.

Proven — Mr. Chatfield — 1.

Not proven — Messrs. Adams, Allen, Benedict, Bowen, Cock, Dickinson, Foster, Graham, Harrower, Johnson, Lewis, Lowery, McGowan, Palmer, Perry, Robertson, Tiemann, Wagner, Weismann, Winslow, J. Wood — 21.

Senator BENEDICT — Mr. President: It seems to me it is not necessary to go through with all this ceremony of calling on charges where there is no pretense of any testimony given.

Senator MURPHY — This charge (11th) and the 12th were abandoned.

The PRESIDENT — The charges cannot be abandoned.

Senator BOWEN — The rule provides a vote shall be had.

Senator MURPHY — We can unanimously dispense with it.

Senator BOWEN — I object.

The PRESIDENT — The Clerk will read.

The CLERK read the eleventh charge, as follows:

"ELEVENTH CHARGE.

"That the said Horace G. Prindle, being such county judge and surrogate as aforesaid, at many and various times during the years 1868, 1869, 1870 and 1871, the precise dates being unknown, at the town of Norwich, in the said county of Chenango, letters of administration, letters testamentary and letters of guardianship having been duly issued by him as such surrogate to numerous persons, whose names are unknown, has demanded, received and extorted from such administrators, executors and guardians, so appointed by him as aforesaid, illegal and exorbitant fees for his own personal

services as such surrogate in and about the granting of the letters aforesaid, and for the services of the clerk of the said surrogate in and about such matters, in willful defiance of the Constitution and laws of said State of New York, and to the great scandal and disgrace of the judicial office."

The PRESIDENT put the question to each member of the Senate, as follows:

"Senator, how say you, is the eleventh item of the charges preferred against the accused proven?"

When each senator rose in his place, and responded as follows:

Not proven — Messrs. Adams, Allen, Benedict, Bowen, Chatfield, Cock, Dickinson, Foster, Graham, Harrower, Johnson, Lewis, Lowery, McGowan, Palmer, Perry, Robertson, Tiemann, Wagner, Weismann, Winslow, J. Wood — 22.

The CLERK read the twelfth charge, as follows:

"TWELFTH CHARGE.

"That the said Horace G. Prindle, being such county judge and surrogate of the said county of Chenango, at the town of Norwich in the said county, during the years 1867, 1868, 1869, 1870 and 1871, having one George W. Ray as a clerk in the office of said surrogate, occupying a table in his said office and performing the duties of a clerk to said Horace G. Prindle as such surrogate, unmindful of the duties of his said office and of his oath of office, and in violation of the Constitution and laws of said State, did unlawfully, knowingly and corruptly, in many and various proceedings and actions pending before said county judge and surrogate, allow, permit and encourage the said George W. Ray to practice as an attorney and counselor at law before him, the said county judge and surrogate, in the matter aforesaid, and in numerous instances did demand, receive and extort from the parties to the proceedings aforesaid employing said Ray, fees for the said Ray, charged by the said Ray for his services as an attorney and counselor at law in the actions and proceeding aforesaid."

The PRESIDENT put the question to each member of the Senate, as follows:

"Senator, how say you, is the twelfth item of the charges preferred against the accused proven?"

When each senator rose in his place, and responded as follows:

Not proven — Messrs. Adams, Allen, Benedict, Bowen, Chatfield, Cock, Dickinson, Foster, Graham, Harrower, Johnson, Lewis, Lowery, McGowan, Palmer, Perry, Robertson, Tiemann, Wagner, Weismann, Winslow, J. Wood — 22.

Senator GRAHAM — Mr. President: I move the Senate do now adjourn.

The question was submitted on the motion of Senator GRAHAM, and it was declared carried.

IN SENATE, THURSDAY, *January* 8, 1873.

Senator ALLEN — Mr. President: If my count is correct, there are but twenty-one senators present who vote upon these various questions. Perhaps I count wrong. It seems to me improper to proceed in taking votes on these questions with only that number present and voting. One senator who is present has been excused from voting on these charges. If there are other senators in the city, the sergeant-at-arms should be sent for them, or some means adopted to procure their attendance here.

The roll was called, and twenty-four senators found to be present.

Senator CHATFIELD — Mr. President: I move that the sergeant-at-arms be instructed to request absent senators, who are in the city, to come in.

The question was submitted on the motion of Senator CHATFIELD, and it was carried.

Senator LEWIS — Mr. President: I am not entirely certain, but I am disposed to think it does not require, on these various charges, a particular number of senators. When we come to the final vote, it requires twenty-two affirmative votes to remove; and having a quorum here, it seeme to me we can go on.

Senator ROBERTSON — Mr. President: I think the term used in the rule is "a majority vote" in favor of any charge until the final vote is taken; so that seventeen might be sufficient.

Senator CHATFIELD — I would like to inquire, Mr. President, if, with seventeen or eighteen senators present, and none of these charges being voted proven, what ground can there be for removal? How can senators vote to remove a man, after it has been proven by the Senate that he is not guilty?

Senator LEWIS — Mr. President: I suppose if a majority present vote that he is guilty; vote affirmatively as to whether the charges are proven, is entirely consistent; if not more than fifteen voted proven, it will be entirely consistent, when we come to the final vote, to remove him; and if we should not vote that he is guilty of a single charge, we have the power, when we come to vote, to expel him, although I do not think it is consistent to do so.

Senator ROBERTSON — Mr. President: As I understand the rule, we have no power to vote to remove the respondent, unless some charge has received a majority of the votes of all the members of the Senate present.

The PRESIDENT — The Chair is not familiar with the rules in this case at all. If there is no objection made, the Clerk will read the thirteenth charge.

The CLERK read the thirteenth charge, as follows:

"THIRTEENTH CHARGE.

"That the said Horace G. Prindle, being such county judge and surrogate as aforesaid, in or about the year 1867, at the town of Norwich, in said county of Chenango, with one George W. Ray, he being then and there a clerk in the office of said county judge and surrogate, made and entered into an unlawful and corrupt agreement and understanding, by which agreement or understanding the said Ray was to do and perform the duties of a clerk to the said surrogate, and as a remuneration therefor he, the said county judge and surrogate, was to give to said Ray what practice he could give him, by his official position and influence, as an attorney and counselor at law, in matters and proceedings brought or pending before said county judge and surrogate; and in pursuance of said unlawful and corrupt agreement and understanding, did, during the years 1868, 1869, 1870 and 1871, give the patronage of his said office of county judge and surrogate, and use of his official position and influence to give to said Ray (who during said years continued a clerk to said county judge and surrogate, and in his office as aforesaid, and performed the duties of surrogate's clerk to him as aforesaid) a large business and practice, in numerous cases, as an attorney and counselor at law as aforesaid, in such matters and proceedings brought and pending before him, the said county judge and surrogate; and did aid and assist him, the said George W. Ray, in charging and collecting fees for services of said Ray, as attorney in the matters aforesaid, and did encourage, aid and assist said Ray, while such clerk as aforesaid, by such fees collected by said Ray to pay himself, under the agreement aforesaid, for the service performed by him as a clerk to said surrogate as aforesaid, in order that the said surrogate might take to himself, for his own use and advantage, the salary provided by law for the payment of a clerk to said surrogate as aforesaid, during the years aforesaid, and did, corruptly, so take and appropriate said salary to his own private use during the years aforesaid, thus profiting individually by the legal practice of his said clerk in

matters so pending before him as such county judge and surrogate; all done in violation of law and to the great scandal and disgrace of the administration of justice in said county."

The PRESIDENT put the question to each member of the Senate, as follows:

"Senator, how say you, is the thirteenth item of the charges preferred against the accused proven?"

When each senator arose in his place, and responded as follows:

When Senator ADAMS' name was called, he arose and said:

Mr. President: I understand, substantially, that the recital contained in this charge is proven, but there is no proof satisfactory to me that it was by any corrupt agreement or arrangement between Mr. Ray and the respondent; I therefore vote not proven.

When Senator TIEMANN's name was called, he arose and said:

Mr. President: I have some doubts on my mind as to the proof of this article, and, therefore, vote not proven.

When Senator McGOWAN's name was called, he arose and said:

Mr. President: I desire to be excused from voting on this charge.

The question was submitted on excusing Senator McGowan, and was declared lost.

Senator McGOWAN — Mr. President: I am voting in the dark, and I must therefore vote not proven.

Proven — Messrs. Benedict, Chatfield, Johnson, Palmer, Wagner—5.

Not proven — Messrs. Adams, Allen, Baker, Bowen, Cock, Dickinson, Foster, Graham, Harrower, Lewis, Lowery, McGowan, Perry, Robertson, Tiemann, Weismann, Winslow, J. Wood, Woodin—19.

The CLERK read the fourteenth charge, as follows:

"FOURTEENTH CHARGE.

"That the said Horace G. Prindle, being such county judge and surrogate as aforesaid, from the 1st day of January, 1864, until the date hereof, has willfully and corruptly neglected, during such time, to keep a book of fees, as required by law and the statutes of said State, and his oath of office."

The PRESIDENT put the question to each member of the Senate, as follows:

"Senator, how say you, is the fourteenth item of the charges preferred against the accused proven?"

When each senator rose in his place, and responded as follows:

When Senator ADAMS' name was called, he arose and said:

Mr. President: I deem this charge to have been proven. Whether he acted corruptly or not I cannot say. I shall vote proven.

When Senator McGowan's name was called, he arose and said:

Mr. President: I vote proven. I will not say it is willfully and corruptly.

When Senator Tiemann's name was called, he arose and said:

Mr. President: Proven by the testimony of the judge himself.

When Senator Winslow's name was called, he arose and said:

Mr. President: Proven without any intent of corruption.

When Senator James Wood's name was called, he arose and said:

Mr. President: It seems to me that senators do not fully comprehend the charge upon which the vote is now being taken. The question is not whether the respondent kept a book of fees or refused to keep one, but whether he corruptly and willfully refused to keep such a book. The truth is, that the requirement of the statute in question has come to be almost, if not quite, a dead letter. Very few of the surrogates, as I understand it, keep books of fees. The predecessor of the respondent kept no book of fees. The respondent did not find such a book when he entered upon the discharge of the duties of his office. None was provided for him by the county. Though the respondent did not comply with the requirements of the statute, I submit the facts and circumstances which surround the charge, show, beyond a doubt, that he did not act corruptly.

Senator Robertson — Mr. President: As I understand the statute, the surrogate was required to keep a book of fees and report to the board of supervisors and pay in those fees. I don't see how it could become a dead letter until after the abolition of the law requiring it.

Senator Benedict — Mr. President: There was never any law abolishing all fees. They now take fees for recording copies and those things.

Senator James Wood — Not at all.

Senator Benedict — They certify copies there. The idea that we should insist upon what is called, in the strict sense, corruption, it seems to me is a most extraordinary idea.

Senator Lewis — Mr. President: I rise to a point of order. The subject is not to be discussed during the roll-call, and the senator is out of order.

The President — The point of order is well taken.

Senator Robertson — Mr. President: I had not examined the charge, but, on recollection and on examination, I find that he is charged with willfully and corruptly neglecting to keep this account. I admit the fact that he did not do it, but to say that he did willfully

The PRESIDENT put the question to each member of the Senate, as follows:

"Senator, how say you; is the fifteenth item of the charges preferred against the accused proven?"

When each senator rose in his place, and responded as follows:

When Senator ADAMS' name was called, he arose and said:

Mr. President: I vote proven, without corrupt intent, perhaps.

When Senator BENEDICT'S name was called, he arose and said:

Mr. President: I beg to say a few words on this subject. Now, as to what is this question of corruption? What do we mean by corruptly and willfully? As was well said by the senator from the twenty-fifth, it means done knowingly, contrary to law, and that is all it means. Now, in regard to this question, the surrogate himself testified that he for one year kept that book of fees and made his affidavit correct for the first year, and rendered his accounts and paid over for the first year; that he knew all about the law, and then he stopped and kept no account. Then what became of the fees? "Why, I spent them as I went along; I had to live." Do we want any more evidence than that, that this was a willful violation of the law — that he took these fees because he must live, and spent them as he went along? Does anybody believe there is another surrogate in the State of New York that does that and gives that reason for it? Many of these things may very well be said to be negligent practice in surrogates' offices, but I am loth to believe in the surrogates' offices all over the State they have been guilty of that which I will not characterize. Is it necessary to prove that the man was bribed to do it — that somebody hired him to do it? There is nothing of that sort; but it was simply a negligence in regard to the keeping of an itemized account, and was simply covering up his tracks. He had not even kept a memorandum book. He could never render an account. Nobody could find out. That is the true nature of this transaction, that he took all those fees and put them in his pocket, and spent them to support his family, if he has one, and declined to keep a single memorandum, so that his tracks were perfectly covered up. Nobody could follow him or see how much he has got. Nobody knows now how much he has got. That is the true nature of this transaction, and I vote proven.

When Senator DICKINSON'S name was called, he arose and said:

Mr. President: Proven, without wishing to convey thereby an intent on the part of the respondent to be willful and corrupt.

When Senator GRAHAM'S name was called, he arose and said:

Mr. President: For the same reason given for voting not proven on the fourteenth charge, I vote not proven on this.

When Senator LEWIS' name was called, he arose and said:

Mr. President: I have no doubt that the judge, in this case, omitted, knowingly, to make an itemized account during some portion of the time with which he is charged with omitting to make this account. I have no doubt that there is not a judge in the State of New York, who has been a judge for five years, who has not violated the law every year of his life. I do not believe there is a sheriff in the State of New York who has not violated the law every day during his term of office, and the county clerk as well. I believe there are very few men in the State who do not violate some law almost every day of their life; profane swearing, some of them by games of chance; and invariably, in my own city, it is noted all over the world as a place for fast trotting, and the very best people in the world sanction it; the elite of my own town; I have seen clergymen there; the best of men in my town go there to witness horse-racing. Now I look at this judge, when contemplating these charges, in view of the fact that men do not live up to the letter of every law upon the statute book; I should be glad if they did, and I am looking forward to the time, when the millennium comes, that we will live up to all the laws, both human and divine; but that time has not quite come yet; it is coming. Judge Prindle has not said, as I recollect his testimony, that he has used his money in the sense which the senator from the fifth speaks of; he does not say that he did not make this itemized account; he does swear that the county to-day owes him on account of these fees collected —

Senator TIEMANN — He won't settle with them.

Senator LEWIS — We are not contemplating now a charge whether he will settle with them or not; we are contemplating a charge that charges him with corruptly and willfully omitting to make this itemized account; he made his report in gross. I had occasion, the other day, to go into the Secretary of State's office, and it occurred to me to look and see how many judges in the State had complied with the law which requires that they should give a certificate of their age, under the new Constitution, they being obliged to go out of office at seventy. There is not one judge in five in the State who has filed that certificate, and still it is a recent law. This is an old law the judge violated. I cannot believe — I do not believe that this man who has administered justice so fairly and so ably in that county for so many years; a man who has, on three occasions, received the majority of the votes of that county; a man who, a

year ago last fall, when this whole subject was canvassed, received the indorsement of his constituents; I do not believe that such a man as this has corruptly and willfully refused to make this itemized account. I don't know what the custom is in other counties; it is better for every surrogate to do it. I would be glad if the surrogates in the counties could be admonished that they must more carefully comply with the law; but for me to say this man has corruptly purloined this money from the county, I am not able to say so, and vote not proven.

Senator BENEDICT — May I ask the senator a question? Did he read the answer of the respondent on page 907?

"Q. What became of the money which you had collected as fees and failed to report in those years? A. When I received any fees, of course I spent them as I went along; had to live."

Senator LEWIS — Certainly; the police justice in my city has from time immemorial collected the fines, as they were collected by him, and used them; when he comes to settle with the city, at the end of the year, he charges himself with the fees, and if he has received more than his salary, he pays to the city the difference; if he has received less than his salary, credits the city with the amount and draws on them for the balance; and that is the custom, I will venture to say, with every officer in the State.

Senator BENEDICT — Another question, that is, whether they pay those officers to keep any account of those fees, and whether they account and then take the money and spend it, and say that is all about it; do they say that in Buffalo?

Senator LEWIS — They take the money and spend it of course. What a preposterous idea it would be for the police justice of the city of Buffalo, who collects perhaps $20,000 a year, to keep it in his pocket! The idea of the senator is, that he must keep the identical money, so as to hand it over to the authorities.

Senator BENEDICT — Did the senator understand me to say that?

Senator LEWIS — I understood the senator to say, he put it in his pocket and spent it; of course he did, but he accounted for it.

Senator BENEDICT — He swears he did not.

Senator LEWIS — He swears he did, and swears that the county owes him to-day; he did, in some of his testimony, say that he did not know; but some years he omitted to report the entire amount; when he comes to sum it all up, he says the county owes him to-day.

Senator JOHNSON — Page 907: "You failed to report the full amount of fees you had received, then, purposely? A. I state the

fact; I knew I had not reported the full amount of fees in those years."

Senator LEWIS — The senator calls my attention to a branch of the testimony I had not referred to before. I recollect the judge did say that he consulted with the supervisors, I think. He was spending money from time to time for various things, and it was understood that he might retain these fees to cover those things that he had expended money for; but that he, corruptly, with a view of stealing the money, put this in his pocket, I cannot believe. I vote not proven.

When Senator TIEMANN'S name was called, he arose and said:

Mr. President: In this charge, as in the former charges, the respondent plead guilty, therefore I vote proven.

When Senator WOODIN'S name was called, he arose and said:

Mr. President: I ask to be excused from voting, as the reasons that I gave upon the other charges apply to this. I need to make a remark or two in reference to the practice of receiving the money and putting it in his pocket and spending it, so that he might live. Now, the statute requires, in addition to his keeping an itemized account, that he shall pay over quarterly to the county treasurer the amount of fees that he has collected, and the county treasurer, in theory, is supposed to receive that money and then hand it right back to him in payment of his salary. If I remember the proof right in this case, the amount voted to him for salary and clerk hire in no one year exceeded — or the amount of fees in no year exceeded — the amount voted for salary and clerk hire.

Senator TIEMANN — What he returned in gross?

Senator WOODIN — Yes, sir.

Senator TIEMANN — The book don't show it.

Senator WOODIN — While it may have been a technical violation of the letter of the law, there was no violation of the spirit of the law in his taking these fees and spending them as he received them. Another thing is true, no harm comes from it whatever; it is true that, with reference to surrogates who keep these itemized accounts, and make a report in detail to the board of supervisors annually, but never go and settle with the county treasurer quarterly. The reason is, because the amount of fees, as a general thing, fall a little below the amount of the salary, and the balance is coming to the surrogate, so that he leaves it until the end of the year; draws his salary quarterly, and under the old law, before fees were abolished, used to draw his salary quarterly and make his report at the end of the year, and if there was any surplus pay over the balance and take

a receipt for it. No harm occurs to anybody, and no harm possibly can accrue to anybody by a violation of the letter of the law in reference to making these quarterly settlements with the county treasurer; the spirit of the law is complied with by making a fair settlement with the county treasurer at the end of the year. I only say that in reply to a remark upon this charge by the senator from the fifth; his habit of taking these moneys and spending them so that he might live, that may have been all true, and yet have been quite immaterial. Now, I think this charge is substantially proven, but, at the same time, I may as well indicate here that the settlements that he did make with the board of supervisors annually upon the reports that he made, however informal they may have been, may be held properly to have put this question, as lawyers say, in the form *res adjudicata*, and in that way, it may be possible that this man shall be preserved from the extreme penalty of removal from office and disgrace. It comes to my mind, that if the board of supervisors, who had complete jurisdiction over the whole subject-matter, investigated this subject and settled with him annually, that, possibly, that may be an excuse to make for a technical violation of this law. I vote substantially proven.

Proven — Messrs. Adams, Allen, Baker, Benedict, Chatfield, Cock, Dickinson, Johnson, Lowery, McGowan, Palmer, Perry, Robertson, Tiemann, Wagner, Weismann, Woodin — 17.

Not proven — Messrs. Bowen, Foster, Graham, Harrower, Lewis, Winslow, J. Wood — 7.

The CLERK read the sixteenth charge, as follows:

"SIXTEENTH CHARGE.

"That the said Horace G. Prindle, being such county judge and surrogate, as aforesaid, from the 1st day of January, 1864, up to the date hereof, did, during the years 1865, and 1866 and 1867, render to the board of supervisors of said county what purported to be an account of the fees received by him in his official capacity as such county judge and surrogate during the years last aforesaid; that said accounts, and each of them, were not rendered in items as by the law required, but stated the amount claimed to be received in gross sums, and did not name the estates or persons from whom the same were received, and that he, the said county judge and surrogate, received fees to an amount largely in excess of the amounts so returned by him in each of the years last aforesaid, and that, in the affidavits attached to said reports of fees, said county judge and surrogate swore that he 'had received the fees' in said report returned,

but corruptly, knowingly, and with intent to mislead the said board of supervisors, and to defraud the said county of Chenango, left out of said affidavits, and each of them, any statement to the effect that such fees so reported were 'all that he had received' during such years, or either of them, and that said county judge or surrogate has refused and still refuses to account to the board of supervisors of said county for the excess of fees so received by him, but not reported as aforesaid, and still willfully and corruptly retains to himself such excess of fees so received and not reported to said board."

The PRESIDENT put the question to each member of the senate, as follows:

"Senator, what say you, is the sixteenth item of the charges preferred against the accused proven?"

When each senator rose in his place, and responded as follows:

When Senator ADAMS' name was called, he arose and said:

Mr. President: I deem this charge substantially proven and vote proven.

When Senator BENEDICT'S name was called, he arose and said:

Mr. President: I want to say a single word with regard to the remarks of the senators from the twenty-fifth and thirty-first in regard to my supposing the surrogate was bound to take every sixpence and lay it aside in the drawer. I did not use that expression, and I did not intend any such thing as that, but that the surrogate, in my judgment, meant and testified to the Senate that he meant to appropriate it to his own use, and he says:

"Q. You failed to report the full amount of fees you received, then, purposely? A. I state the fact; I knew I hadn't reported the full amount of fees in those years."

And he says, "When I received any fees, of course I spent it as I went along; had to live."

Those two things, put together, go to establish that he appropriated that money; that he deliberately failed to keep this account at the first year, and put the money in his pocket and never made a true report of the amount which he had. He made a sort of guess-work, which was clearly within bounds, because, as he said, "when I drew the affidavit I wanted to draw one that I could swear to truthfully," and therefore he had to draw it within bounds, and said he received so much money; not that that was all he received; he may have received twenty-five hundred; doesn't recollect; but nobody knows any thing about the facts, and the fact is it is a suppression of it.

Secondly, that he did not do it; and thirdly, that the question is not, here, whether he now owes, whether he has ever paid up the balance he owes the county, or whether they have given him the balance; that is not the question at all; the question is whether, in violation of the law, he knowingly refused to keep that account and to report those fees, and to swear to it correctly, no matter if they had given him ever so much. We are not inquiring how much was due; that is not the point; the question is what *he* did; not what *they* did. Neither of them have the power to pardon for the offense. It is the offense we are talking about, and not the amount due. If they might give him the amount due, it would not make any difference on that question. I vote proven.

When Senator JOHNSON'S name was called, he arose and said:

Mr. President: I ask to be excused from voting, to call the attention of the Senate briefly to a paragraph, or answer or two, made by the judge in response to the sixteenth charge, which substantially charges him with not rendering a correct account, and with making an affidavit which did not state the full measure of the requirements of the law. The question was asked, on page 906:

"Q. When you made your report of fees in the years '65, '66, '67, did you know that you were violating the law in the manner in which you made that report? A. Well, I knew I didn't make the items of the amount of fees, of course.

Q. Did you know that you were violating the law when you made that report? A. Technically, perhaps, I did.

Q. Did you know, sir, that you were not reporting the full amount of fees that you had received during those years? A. I did.

Q. You did know it? A. Yes, sir.

Q. Did you leave that part out of your affidavit purposely, the part that — did you leave out any statement from your affidavit purposely, to the effect that you did not receive any more than you reported? A. I made that affidavit for the reason I had never kept a book of fees as mentioned in the law, and therefore could not swear that these were all the fees I had received."

"Q. You failed to report the full amount of fees you had received, then, purposely? A. I state the fact; I knew I hadn't reported the full amount of fees in those years."

Would not it seem from that, as a matter of course, that Judge Prindle acknowledged, substantially, the charge made in this sixteenth charge? Therefore, I vote proven.

When Senator LEWIS' name was called, he arose and said:

Mr. President: I desire to read a word, in explanation of my vote, at page 907, which the distinguished senator left out:

"Q. You made your report less than the amount you had received, purposely? A. I made my report for the full amount I had received of fees, after deducting the expenses that I considered the county should pay, and I so explained it to the board at the time; the committee.

"Q. Did you go to the board? A. Yes, with the exception of '64, I made an itemized report, and in '65, '66 and '67 I did not.

"Q. What became of the money which you had collected as fees and failed to report in those years? A. When I received any fees of course I spent it as I went along; had to live.

"Q. Then you reported about what you thought the county ought to have? A. In the affidavit I drew, I wanted to draw one I could swear to truthfully.

"Q. You failed to report the full amount of fees you had received, then, purposely? A. I state the fact; I knew I hadn't reported the full amount of fees in those years."

Then down below:

"Q. Did you consult any memoranda or any data, when you made those reports in '65, '66 and '67, to ascertain about the amount of fees that you had received? A. I did.

"Q. What did you consult? A. I looked over the books; no, sir, I reported; allowing the amount of fees, after deducting the expenses I was compelled to pay for fuel and other necessary expenses of holding surrogate's court, and conducting the office and the rest of it was reported; and I have examined the matter since to have a fair account, and, as between the county and myself, they owe me, after paying the expense.

"Q. How is that? A. I say upon a fair accounting between the county, after deducting the expense that I was compelled to pay, the county would owe me to-day, and of that I speak understandingly."

I vote not proven.

Senator MURPHY — Will the senator allow me a question; that is, whether the county did actually settle with him at the end of each of those years?

Senator LEWIS — That he took the account in, made out in gross, the committee accepted the account, knowing it was made out in that way, and the matter was reported to the board of supervisors; they settled with him each year in that way, recognizing the fact they had a right to make the report in that way.

Senator BENEDICT — Can you refer me to any such testimony as that in the book?

Senator LEWIS — I have just read it at some place in this report, and he swears to the fact that they settled with him annually.

Senator BENEDICT — No, sir; I do not know of any such testimony.

Senator LEWIS — There was testimony that he had made a report and his matters were adjusted every year; at any rate, we heard here no complaint of it until he was elected county judge.

Senator BENEDICT — Didn't they try to bring him up before them?

Senator LEWIS — I understand they did when this disturbance arose in the fall of 1871; that was 1865; the thing had subsided 1865, 1866 and 1867, and one year more would have foreclosed the account, any way; we did not find any proceedings in the board of supervisors, and I venture that the indefatigable lawyers in this case would have had it before us if there was any proof of that kind, and we heard no proof that there was any controversy between him and the board of supervisors, and he made his report, and the committee accepted it every year; we have the right to presume the county was satisfied.

Senator BENEDICT — We have the whole controversy of the board of supervisors here.

Senator LEWIS — That arose six years afterward.

When Senator PALMER's name was called, he arose and said:

Mr. President: If the settlement of the board of supervisors with the surrogate of Chenango county every year, as is usual in all counties, would free the judge from any charge of this kind, because they settled with him, then, in the county of Columbia, in my district, where they have settled with the county treasurer every year in the same manner, and within twenty days settled with him, but have since found out that in other settlements he did not make a full return, and that he is a defaulter to the amount of over $100,000; I say, if this settlement with the board of supervisors would clear Judge Prindle of this charge, then I should say our county treasurer might, in the same manner, be free from the charge of his being a defaulter. I cannot base my vote at all upon the argument of the senator from the thirty-first, that that settlement really settled the whole case, and therefore the judge was not guilty.

Senator LEWIS — Will the senator allow me a question? Suppose the question with the settlement of the county treasurer you refer to was simply a question as to the form of his reporting, not as to

whether he had reported the full amount, but simply whether he had dotted all his i's and crossed all his t's, and they had settled with him. That is the question here, whether he had made it out in the proper manner.

Senator PALMER — I do not understand it so; it says he did not report all the fees he received.

Senator LEWIS — He says he has reported them all, and that the county owes him to-day on the account of these very fees, and nobody contradicts him.

Senator JOHNSON — Mr. President: I desire to ask the senator a question —

Senator BOWEN — Mr. President: I rise to a point of order, that debate is out of order. On the taking of a vote, as I understand it, the only right the person whose name is called has, is the right to ask to be excused from voting, and the right to state that excuse, not exceeding five minutes; and this entire controversy is out of order. I would not object to it if any person was convinced by the transaction. If not, we can get along faster by not having it take place.

Senator PALMER — I yield, and consider the point of order well taken. I was simply stating that if the argument of the senator from the thirty-first holds good in this case, I should vote not proven. I don't think it will hold good, because it may turn out afterward the judge did not make a full report; therefore I must vote this charge is proven.

When Senator WOODIN's name was called, he arose and said:

Mr. President: I ask to be excused from voting on this charge. I shall vote not proven, not because some of the statements here are not clearly proven, but because some material part of it I understand to be proven. I read about the middle of the charge: "And that in the affidavits attached to said reports of fees, said county judge and surrogate swore that he 'had received the fees' in said report returned, but corruptly, knowingly, and with intent to mislead the said board of supervisors." Now, if I understand it correctly, that this report — a conversation that the judge had with the committee who came in to settle with him — that through them he distinctly stated the object of using the language which he did in his affidavit, he distinctly stated that instead of its being made with intent to mislead, that he went into an explanation, and did state to them that he had reported the balance that they received. Now, I do not believe that this charge is true — that he made the affidavit and made the report in the manner in which he did with a corrupt

intent to mislead the board of supervisors, and therefore I shall vote not proven on this charge.

Senator JOHNSON — He says he did not make the statement in the three years.

Senator ROBERTSON — Yes, sir; he did.

Proven — Messrs. Adams, Allen, Baker, Benedict, Chatfield, Cock, Dickinson, Johnson, Lowery, Palmer, Perry, Robertson, Tiemann, Wagner, Weismann — 15.

Not proven — Messrs. Bowen, Foster, Graham, Lewis, McGowan, J. Wood, Woodin — 7.

The CLERK then read the seventeenth charge, as follows:

"SEVENTEENTH CHARGE.

"That on the 5th day of August, A. D. 1868, at the town of Norwich, in the county of Chenango and State of New York, Horace G. Prindle, then being county judge and surrogate of the said county, and the will of one Benjamin Hook having been duly admitted to probate by and before said surrogate, and letters testamentary having been duly issued to Esther Hook, widow of said deceased (and now Esther Russell), unmindful of the duties of his said office and of his oath of office, and for his own private gain and advantage, did corruptly, willfully and fraudulently persuade and induce the said Esther Hook (now Esther Russell), executrix of said last will and testament (she being then an old lady of the age of sixty-eight years and upward, and relying upon the said surrogate for counsel and advice in reference to her duties as executrix of said estate), to sell to him, the said surrogate, $1,500 in United States 5-20 bonds belonging to said estate, at a sum greatly below their actual market value, to wit, for their face and a small amount of unpaid and accrued interest, said surrogate well knowing that said bonds were then worth in the market a premium of upward of $130 over and above what he paid for the same, and well knowing that the said Esther Hook, executrix as aforesaid, could get the full value of the same at the National Bank of Norwich, where said bonds were then deposited for safe-keeping, by walking to said bank, a distance of about forty rods; that said surrogate, fearing that if said executrix went to said bank after the bonds herself she might learn that said bonds were worth the premium aforesaid, persuaded said executrix to give him, the said surrogate, an order therefor in writing, indorsed upon the deposit ticket of said bonds; and that on the 26th day of December, 1868, said surrogate presented said order to said National Bank of

Norwich, and gave therefor a receipt indorsed upon the deposit book of said bank in the following form, to wit: 'Rec'd fifteen hundred 5-20 bonds opposite per order of and for Esther Hook, executrix of Benjamin Hook, deceased, Dec. 26, 1868. A. G. Prindle;' and on the same day had said bonds transferred to his own private account at said bank, and on the 2d day of November, 1869, drew said bonds from the bank aforesaid, and exchanged them for New York and Oswego Midland railroad bonds, at the office of the treasurer of said railroad, in Norwich, New York, for his own use and benefit, thereby corruptly and unlawfully making for his own private use and advantage out of said estate about the sum of $300."

The PRESIDENT put the question to each member of the Senate, as follows:

"Senator, how say you, is the seventeenth item of the charges preferred against the accused proven?"

When each senator rose in his place, and responded as follows:

When Senator WOODIN's name was called, he arose and said:

Mr. President: I ask to be excused from voting. I shall vote, when I come to vote upon this question, not proven, and yet I have faith to believe there is not a senator around this circle who would have done what Judge Prindle did. It was a great indiscretion on his part and made him liable to imputations, but there is an utter failure, *utter* failure of evidence to support this charge. I have read it carefully, because I remember at the time the old lady was on the stand that my sympathies were wrought up a good deal in her interest, and my prejudices were stimulated, if I had any, and excited against the respondent. I examined it carefully, and I am free to say that, of all questions that was ever submitted to me to act upon, judicially, that this has the appearance of every doubt. There is no possible proof to sustain this charge; not an item. Now, in the first line at the top of page twelve it charges "that he, being unmindful of the duties of his office;" it had no reference to the duties of his office as surrogate, simply his duty as a man, to give the old lady advice in reference to selling her bonds, not her action as executrix. The bonds were her individual property, and the advice that he gave, whether it was good or bad, is just the same as though it was given to me if I had casually happened in the office. The property was here.

Senator JOHNSON — Yet the receipt says executrix.

Senator WOODIN — Very true; you speak of the receipt for the bonds; they were deposited in the bank by the testator, and in the

name of the testator, and when the receipt was given she received it from the bank as the executrix of the testator; the receipt was proper; it would not have been, perhaps, — it might not have been, technically, a good receipt; it would not certainly have been if the property had not been given to her; but if she had gone over and signed the receipt with her single name, without giving the character of her office, as against everybody in the world except creditors, the receipt would have been a perfect answer to any claim, but, in this case, inasmuch as the interest of the creditors was not involved at all, the receipt would have been good with the title left off. It further states in this charge that she was an old lady of sixty-eight years and upward, and relying upon such surrogate for counsel and advice, etc., and it was not in reference to advice as executrix of the estate in reference to the sale of these bonds at all; that was not the question; another thing: he was not discharging his duty as surrogate, as to whether she should sell those bonds with a view to provide this young man with money to go west. Still I say, now, as I stated before, I would not have done what he did; I would not have bought them; I would not have dealt with her; his duty as an individual, as a man, ought to have suggested to him the impropriety of his dealing with the old lady in reference to property that may perhaps be the property of the estate; but it was her property, it turns out, and no harm was done to anybody excepting her, and that was with Mr. Prindle, but not as surrogate of Chenango county, and she not acting as executrix. I vote not proven.

Proven — Messrs. Allen, Benedict, Chatfield, Cock, Johnson, Lowery, Palmer, Tiemann, Wagner, Weismann—10.

Not proven — Messrs. Adams, Baker, Bowen, Dickinson, Foster, Graham, Harrower, Lewis, McGowan, Perry, Robertson, J. Wood, Woodin—13.

The CLERK read the eighteenth charge, as follows:

"EIGHTEENTH CHARGE.

"That on or about the 9th day of May, A. D. 1871, at the town of Greene, in the county of Chenango and State of New York, Horace G. Prindle then being county judge and surrogate of said county, and the will of one Susan B. Ockerman, deceased, having been duly admitted to probate by and before him as such surrogate, unmindful of the duties of his said office and of his oath of office, and in violation of the Constitution and laws of said State, did unlawfully knowingly and corruptly demand, receive and extort from one John

Ockerman, executor of said last will and testament, the sum of twenty-five dollars, for and on account of the services rendered by him, the said Horace G. Prindle, upon the probate of said will, he being entitled to a small portion only (if to any part) of said sum, as his lawful disbursements of said matters."

Senator ROBERTSON — Mr. President: I desire to say that in regard to this charge the counsel for the people gave no evidence whatever.

The PRESIDENT put the question to each member of the Senate as follows:

"Senator, how say you, is the eighteenth item of the charges preferred against the accused proven?"

When each senator rose in his place, and responded as follows:

Not proven — Messrs. Adams, Allen, Baker, Benedict, Bowen, Chatfield, Cock, Dickinson, Foster, Graham, Harrower, Johnson, Lewis, Lowery, McGowan, Palmer, Perry, Robertson, Tiemann, Wagner, Weismann, J. Wood, Woodin—23.

The CLERK read the nineteenth charge, as follows:

"NINETEENTH CHARGE.

"That on or about the 10th day of July, A. D. 1871, at the town of Norwich, in the county of Chenango and State of New York, Horace G. Prindle then being county judge and surrogate of said county, and the last will and testament of one Charles E. Jacobs having been duly admitted to probate by and before him as such surrogate, unmindful of the duties of said office, and of his oath of office, and in violation of the Constitution and laws of said State, unlawfully, knowingly and corruptly did demand, receive and extort from one Charles Todd, executor of said will, the sum of eight dollars and eighty-five cents, for and on account of the services rendered by him, the said Horace G. Prindle, upon the probate of said will, he being entitled to a small part thereof only (if to any part thereof), as his lawful disbursements in and about said matter."

Senator BENEDICT — Mr. President: I ask to be excused. This is one of those cases, of which there are a great many in this book, of those charges in which for regular services in proving a will Mr. Ray performed the service and received the money for it, while he was a clerk in that office, which he had no right to do; and therefore I shall vote proven on this and other cases of that class. I am not quite certain that Mr. Ray had any thing to do with this charge.

Senator ROBERTSON — The money was handed to Judge Prindle, and Judge Prindle handed it to Ray.

The PRESIDENT then put the question to each member of the Senate, as follows:

"Senator, how say you, is the nineteenth item of the charges preferred against the accused proven?"

When each senator rose in his place, and responded as follows:

Proven — Messrs. Benedict, Chatfield, Johnson, Tiemann—4.

Not proven — Messrs. Adams, Allen, Baker, Bowen, Cock, Dickinson, Foster, Graham, Harrower, Lewis, Lowery, McGowan, Palmer, Perry, Robertson, Wagner, Weismann, J. Wood—18.

The CLERK read the twentieth charge, as follows:

"TWENTIETH CHARGE.

"That on or about the 30th day of August, A. D. 1871, at the town of Norwich, in the county of Chenango and State of New York, Horace G. Prindle, then being county judge and surrogate of said county, and the will of one Henry Bennett, deceased, having been duly admitted to probate by and before him as such surrogate, and said will having been duly recorded in his said office, and he having one George W. Ray as a clerk in his said office, occupying a table in his said office and performing the duties of a clerk to him the said surrogate, unmindful of the duties of his said office, and of his oath of office, and in violation of the Constitution and laws of said State, did unlawfully, knowingly and corruptly demand, receive and extort, and did unlawfully, knowingly and corruptly allow, aid, assist and encourage him, the said George W. Ray, to demand, receive and extort (he being then and there a clerk of said surrogate, as aforesaid) from one John T. White, for a certified and authenticated copy of the said last will and testament of the said Henry Bennett, deceased, the sum of ten dollars, said sum being largely in excess of the fees allowed by law for the services and authenticated papers aforesaid."

The PRESIDENT put the question to each member of the Senate, as follows:

"Senator, how say you, is the twentieth item of the charges preferred against the accused proven?"

When each member rose in his place, and responded as follows:

Proven — Messrs. Benedict, Chatfield, Cock, Johnson, Tiemann — 5.

Not proven — Messrs. Adams, Allen, Baker, Bowen, Dickinson, Foster, Graham, Harrower, Lewis, Lowery, McGowan, Palmer, Perry, Robertson, Wagner, Weismann, Winslow, J. Wood — 18.

The CLERK read the twenty-first charge, as follows:

"TWENTY-FIRST CHARGE.

"That on or about the 25th day of December, A. D. 1868, at the town of Norwich, in the county of Chenango and State of New York, Horace G. Prindle, then being county judge and surrogate of said county, and letters of administration having been duly granted by him, as such surrogate, upon the estate of Fuller P. King, deceased, and letters of guardianship to one Joseph M. King, as guardian of Lizzie B. King, an infant, having been also granted by him, as such surrogate, unmindful of the duties of his said office, and of his oath of office, and in violation of the Constitution and laws of said State, did unlawfully, knowingly and corruptly receive and extort from the said Joseph M. King the sum of ten dollars for and on account of the services rendered by him, the said Horace G. Prindle, upon the granting of said letters of administration and letters of guardianship, he being entitled to a small portion only (if to any part) of said sum as his lawful disbursements on account of said matters."

The PRESIDENT put the question to each member of the Senate, as follows:

"Senator, how say you, is the twenty-first item of the charges preferred against the accused proven?"

When each senator rose in his place, and responded as follows:

Proven — Messrs. Benedict, Chatfield, Cock, Johnson, Lowery, Tiemann — 6.

Not proven — Messrs. Allen, Baker, Bowen, Dickinson, Graham, Harrower, Lewis, McGowan, Palmer, Perry, Robertson, Wagner, Weismann, Winslow, J. Wood — 15.

The CLERK read the twenty-second charge, as follows:

"TWENTY-SECOND CHARGE.

"That on or about the 20th day of July, A. D. 1871, at the town of Norwich, in the county of Chenango and State of New York, Horace G. Prindle, then being county judge and surrogate of said county, and the will of one Joel Burdick having been duly admitted to probate by and before him as such surrogate, unmindful of the duties of his said office, and of his oath of office, and in violation of the Constitution and laws of said State, did unlawfully, knowingly and corruptly, demand and attempt to extort from one De Witt Craft, executor of said last will and testament, the sum of thirty dollars, for and on account of the services rendered by him, the said Horace G. Prindle, upon the probate of said will, he being

entitled to a small portion only of said sum, as his lawful disbursements on account of said matter."

When Senator PALMER's name was called, he arose and said:

Mr. President: I don't know any thing about this charge. I ask to be excused from voting, unless some senator will state what the facts are.

Senator TIEMANN — Mr. President: I have some doubt about this, therefore I give it to the respondent and vote not proven.

Senator ALLEN — Mr. President: The reason why I did not rise and respond to my name when it was called was, I was trying to refer to the evidence in this case, which would give me some indication of what the charge was, for I am entirely unable from memory to call my attention to these various charges, without looking up the evidence.

Senator ROBERTSON — At page 766, you will find Mr. Ray's testimony.

Senator ALLEN — Will the senator from the ninth have the kindness to state, in substance, what Mr. Ray's testimony is in reference to this charge, if he is familiar with it.

Senator ROBERTSON — At page 765, Mr. President, Mr. Ray testifies that Craft came to him as a stranger, and that he drew the papers. He had some public notices in the Albany Argus, I think, for which he had to pay printers' fees. I think Craft came and stayed with him some time; when he was through, he charged him a bill; I don't recollect the amount; it was paid to him and not to Judge Prindle.

Senator JOHNSON — Mr. Craft swears he paid it to Judge Prindle.

Senator BENEDICT — That Judge Prindle did the business — undertook to do the business; did the writing; putting the papers in shape.

When Senator ALLEN's name was called, he arose and said:

Mr. President: Having doubt about the case, not willing to do injustice to the respondent, I vote not proven.

The PRESIDENT put the question to each member of the Senate, as follows:

"Senator, how say you, is the twenty-second item of the charges preferred against the accused proven?"

When each senator rose in his place, and responded as follows:

Proven — Messrs. Benedict, Chatfield, Cock, Johnson — 4.

Not proven — Messrs. Adams, Allen, Baker, Bowen, Dickinson, Foster, Graham, Harrower, Lewis, Lowery, McGowan, Palmer, Perry, Robertson, Tiemann, Wagner, Weismann, J. Wood — 18.

The CLERK read the twenty-third charge, as follows:

"TWENTY-THIRD CHARGE.

"That on or about the 19th day of January, A. D. 1870, at the town of Norwich, in the county of Chenango and State of New York, Horace G. Prindle, then being county judge and surrogate of said county, and the will of one Orrin Dilley having been admitted to probate by and before him as such surrogate, and he having one George W. Ray as a clerk in his said office, occupying a table in his said office, and performing the duties of a clerk to him, the said surrogate, unmindful of the duties of his said office, and of his oath of office, and in violation of the Constitution and laws of this State, did unlawfully, knowingly and corruptly allow, permit and encourage the said George W. Ray, who was then and there a clerk of said surrogate as aforesaid, to practice as an attorney and counselor at law before him, the said surrogate, and did unlawfully, willfully and corruptly demand, receive and extort and permit, aid, assist and encourage him, the said George W. Ray, to demand, receive and extort from one Warren Wrightman, executor of the last will and testament of the said Orrin Dilley, deceased, the sum of fifteen dollars, for and on account of services rendered by him, the said surrogate, or by his said clerk, on the probate of the will aforesaid."

The PRESIDENT put the question to each member of the Senate, as follows:

"Senator, how say you, is the twenty-third item of the charges preferred against the accused proven?"

When each senator rose in his place, and responded as follows:

When Senator ADAMS' name was called, he arose and said:

Mr. President: On the ground that I believe there is no proof that Mr. Ray was a clerk of the judge, I vote not proven.

Proven—Messrs. Chatfield, Cock, Johnson, Tiemann—4.

Not proven—Messrs. Adams, Allen, Baker, Benedict, Bowen, Dickinson, Foster, Harrower, Lewis, Lowery, McGowan, Palmer, Perry, Robertson, Wagner, Weismann, J. Wood—17.

The CLERK read the twenty-fourth charge, as follows:

"TWENTY-FOURTH CHARGE.

"That on or about the 4th day of September, A. D. 1869, at the town of Norwich, in the county of Chenango and State of New York, Horace G. Prindle, then being county judge and surrogate of said county, and the wills of Sarah C. Furman and Russell Furman, each having been duly admitted to probate by and before him

as such surrogate, unmindful of the duties of his said office and of his oath of office, and in violation of the Constitution and laws of said State, did unlawfully, knowingly and corruptly demand, receive and extort from Frederick W. Furman, executor of each of said wills, the sum of forty dollars, for and on account of the services rendered by him, the said Horace G. Prindle, upon the probate of said wills, he being entitled to a small portion only (if to any part) of said sum as his lawful disbursements on account of said matters."

When Senator JOHNSON's name was called, he arose and said:

Mr. President: I find, on page 580, that Frederick W. Furman swears that he went to Judge Prindle to get those papers in relation to the will, and Judge Prindle furnished the papers, and he asked Judge Prindle what was to pay, and he told him $40, and he paid him the money; I, therefore, vote proven.

When Senator LEWIS' name was called, he arose and said:

Mr. President: I listened with very great care and attention to the testimony of Mr. Ray; I was impressed not only with his candor as a witness, but with his remarkable capacity and ability; I think I never saw a witness upon the stand who manifested more intelligence and apparent candor and I think his testimony clearly demonstrated he has been of very great benefit to the people of that county for the services he performed, and I recollect the testimony, that he especially denied the money went to Judge Prindle, but to him, as the balance of it did for his services.

When Senator ROBERTSON's name was called, he arose and said:

Mr. President: I find in the testimony of Mr. Ray, he says that Mr. Steer and Mr. Furman came to him and stated that they had two wills to prove; asked him what he would charge for doing the business; he said $40; he said they made it a bargain before he touched a paper or did any thing in regard to it; did all the business, and all the money was paid to him when the surrogate was absent; I vote not proven; that testimony is at page 768.

The PRESIDENT put the question to each member of the Senate, as follows:

"Senator, how say you, is the twenty-fourth item of the charges preferred against the accused proven?"

When each senator rose in his place, and responded as follows:

Proven — Messrs. Chatfield, Cock, Johnson, Tiemann — 4.

Not proven — Messrs. Adams, Allen, Baker, Bowen, Dickinson, Foster, Harrower, Lewis, Lowery, McGowan, Palmer, Perry, Robertson, Wagner, Weismann, Winslow, J. Wood — 17.

The CLERK read the twenty-fifth charge, as follows:

"TWENTY-FIFTH CHARGE.

"That in or about the month of July, A. D. 1870, at the town of Norwich, in the county of Chenango and State of New York, Horace G. Prindle, then being county judge and surrogate of said county, and letters of administration having been duly granted upon the estate of Almon Trask by him as such surrogate, unmindful of the duties of his office and of his oath of office, and in violation of the Constitution and laws of said State, did unlawfully, knowingly and corruptly demand, receive and extort from one Bradley F. Gregory, administrator of said estate, the sum of twenty-five dollars, for and on account of the services rendered by him, the said Horace G. Prindle, upon the granting of the letters of administration aforesaid."

The PRESIDENT put the question to each member of the Senate, as follows:

"Senator, how say you, is the twenty-fifth item of the charges preferred against the accused proven?"

When each senator rose in his place, and responded as follows:

Proven — Messrs. Benedict, Chatfield, Cock, Johnson, Lowery, Tiemann — 6.

Not proven — Messrs. Adams, Allen, Baker, Bowen, Dickinson, Foster, Harrower, Lewis, McGowan, Palmer, Perry, Robertson, Wagner, Weismann, Winslow, J. Wood — 16.

The CLERK read the twenty-sixth charge, as follows:

"TWENTY-SIXTH CHARGE.

"That on or about the 13th day of June, A. D. 1870, at the town of Norwich, in the county of Chenango and State of New York, Horace G. Prindle, then being county judge and surrogate of said county, and the will of one Charles C. Eddy, deceased, having been duly admitted to probate by and before him as such surrogate, and he having one George W. Ray as a clerk in his said office, occupying a table in his said office, and performing the duties of a clerk to him, the said surrogate, unmindful of the duties of his said office, and of his oath of office, and in violation of the Constitution and laws of said State, did unlawfully, knowingly and corruptly allow, permit and encourage the said George W. Ray (he being then and there a clerk of said surrogate as aforesaid) to practice as an attorney and counselor at law before him, the said surrogate, and

did unlawfully, willfully and corruptly demand, receive and extort, and did knowingly permit, aid, assist and encourage him, the said George W. Ray, to demand, receive and extort from one John S. Eddy, executor of said estate, the sum of twenty-five dollars on account of the services rendered by him, the said surrogate, or by his said clerk, on the probate of the will aforesaid."

The PRESIDENT put the question to each member of the Senate, as follows:

"Senator, how say you, is the twenty-sixth item of the charges preferred against the accused proven?"

When each senator arose in his place, and responded as follows:

Proven — Messrs. Benedict, Chatfield, Cock, Johnson, Tiemann — 5.

Not proven — Messrs. Adams, Allen, Baker, Bowen, Dickinson, Foster, Harrower, Lewis, Lowery, McGowan, Palmer, Perry, Robertson, Wagner, Weismann, Winslow, J. Wood — 17.

The CLERK read the twenty-seventh charge, as follows:

"TWENTY-SEVENTH CHARGE.

"That on or about the 21st day of April, 1870, at the town of Norwich, in the county of Chenango and State of New York, Horace G. Prindle, then being county judge and surrogate of said county, and letters of administration upon the estate of Fuller P. King, deceased, having been duly granted by him as such surrogate, and he having one George W. Ray as a clerk in his office, occupying a table in his said office, and performing the duties of a clerk to him, the said surrogate, unmindful of the duties of his said office and of his oath of office, and in violation of the Constitution and laws of said State, did unlawfully, knowingly and corruptly allow, permit and encourage the said George W. Ray (he being then and there a clerk of said surrogate aforesaid) to practice before him, the said surrogate, and did unlawfully, willfully and corruptly demand, receive and extort, and did knowingly permit, aid and encourage him, the said George W. Ray, to demand, receive and extort from one Joseph M. King, administrator of said deceased, the sum of fifty dollars, on account of services rendered by him, the said surrogate, and by his said clerk, in and about the settlement of said estate, he being entitled to a small portion only (if to any part) of said sum as his lawful disbursements on account of said matters."

The PRESIDENT put the question to each member of the Senate, as follows:

"Senator, how say you, is the twenty-seventh item of the charges preferred against the accused proven?"

When each senator rose in his place, and responded as follows:

Proven — Messrs. Benedict, Chatfield, Cock, Johnson, Tiemann — 5.

Not proven — Messrs. Adams, Baker, Dickinson, Foster, Harrower, Lewis, Lowery, McGowan, Palmer, Perry, Robertson, Wagner, Weismann, Winslow, J. Wood — 15.

The CLERK read the twenty-eighth charge, as follows:

"TWENTY-EIGHTH CHARGE.

"That on or about the 21st day of April, 1870, at the town of Norwich, in the county of Chenango and State of New York, Horace G. Prindle, then being county judge and surrogate of said county, and he having one George W. Ray as a clerk in his said office, occupying a table in his said office, and performing the duties of a clerk to him, the said county judge, unmindful of the duties of his said office and in violation of the Constitution and laws of said State, did unlawfully, knowingly and corruptly allow, permit and encourage the said George W. Ray (he being then and there a clerk of said county judge as aforesaid), to practice as an attorney and counselor at law, before him, the said county judge, in a certain proceeding for the sale of the real estate of one Lizzie B. King, an infant, then and there pending before said county judge; and did unlawfully, willfully and corruptly demand, receive and extort, and did knowingly permit, aid, assist and encourage him, the said George W. Ray, to demand, receive and extort from one Joseph M. King, as special guardian of said infant, the sum of sixty-five dollars, in violation of the statute in such case made and provided, and contrary to his official duty as aforesaid."

The PRESIDENT put the question to each member of the Senate, as follows:

"Senator, how say you, is the twenty-eighth item of the charges preferred against the accused proven?"

When each senator rose in his place, and responded as follows:

Proven — Messrs. Benedict, Chatfield, Cock, Tiemann — 4.

Not proven — Messrs. Adams, Allen, Baker, Bowen, Dickinson, Foster, Harrower, Johnson, Lewis, Lowery, McGowan, Palmer, Perry, Robertson, Weismann, Winslow, J. Wood — 17.

The CLERK read the twenty-ninth charge, as follows:

"TWENTY-NINTH CHARGE.

"That on or about the 24th day of January, A. D. 1870, at the town of Norwich, in the county of Chenango and State of New York, Horace G. Prindle, then being county judge and surrogate of said county, and letters of administration having been duly granted upon the estate of La Fayette Winsor, by him as such surrogate, and he, the said surrogate, having one George W. Ray as a clerk in his said office, and performing the duties of a clerk to the said surrogate, unmindful of the duties of his said office and of his oath of office, and in violation of the Constitution and laws of said State, did unlawfully, knowingly and corruptly allow, permit and encourage the said George W. Ray (he being then and there a clerk of said surrogate as aforesaid) to practice as an attorney and counselor at law before him, the said surrogate, and did unlawfully, willfully and corruptly demand, receive and extort, and did knowingly permit, aid, assist and encourage him, the said George W. Ray, to demand, receive and extort from one Derrick L. Sheppard, administrator of said estate, the sum of twenty dollars on account of the services rendered by him, the said surrogate, or by his said clerk, on the final settlement of the estate aforesaid."

The PRESIDENT put the question to each member of the Senate, as follows:

"Senator, how say you, is the twenty-ninth item of the charges preferred against the accused proven?"

When each senator rose in his place, and responded as follows:

Proven — Messrs. Benedict, Chatfield, Cook, Johnson, Tiemann — 5.

Not proven — Messrs. Adams, Baker, Bowen, Dickinson, Foster, Harrower, Lewis, Lowery, McGowan, Palmer, Perry, Robertson, Weismann, Winslow, J. Wood, Woodin — 16.

The CLERK read the thirtieth charge, as follows:

"THIRTIETH CHARGE.

"That on or about the 30th day of July, 1870, at the town of Norwich, in the county of Chenango aforesaid, Horace G. Prindle, then being county judge and surrogate of said county, and the will of one Isaiah Loomis, deceased, having been duly admitted to probate by and before him as such surrogate, and he having one George W. Ray as a clerk in his said office, and occupying a table in his said office, and performing the duties of a clerk to him, the said surrogate, unmindful of the duties of his said office and of his oath of

office, and in violation of the Constitution and laws of said State did unlawfully, knowingly and corruptly allow, permit and encourage the said George W. Ray (he being then and there a clerk of said surrogate as aforesaid) to practice as an attorney and counselor at law before him, the said surrogate, and did permit, aid and assist him, the said George W. Ray, to demand, receive and extort from one E. Darwin Haywood, executor of said Isaiah Loomis, deceased, the sum of ten dollars, on account of the services rendered by him, the said surrogate, or by his said clerk, on the probate of the will aforesaid."

The PRESIDENT put the question to each member of the Senate, as follows:

"Senator, how say you, is the thirtieth item of the charges preferred against the accused proven?"

When each senator rose in his place, and responded as follows:

Proven — Messrs. Chatfield, Johnson, Tiemann — 3.

Not proven — Messrs. Adams, Allen, Baker, Bowen, Cock, Dickinson, Foster, Harrower, Lewis, Lowery, McGowan, Palmer, Perry, Robertson, Weismann, Winslow, J. Wood, Woodin — 18.

The CLERK read the thirty-first charge, as follows:

THIRTY-FIRST CHARGE.

That on the 24th day of August, 1868, at the town of Norwich, in the county of Chenango and State of New York, Horace G. Prindle, then being county judge and surrogate of said county, and the will of Theodore Lewis, deceased, having been duly admitted to probate by and before said surrogate, and he, the said surrogate, having one George W. Ray as a clerk in his said office, and performing the duties of a clerk to him, the said surrogate, unmindful of the duties of his said office, and of his oath of office, and in violation of the Constitution and laws of said State, did unlawfully, knowingly and corruptly allow, permit and encourage the said George W. Ray (he being then and there a clerk to said surrogate as aforesaid) to practice as an attorney and counselor at law before him, the said surrogate, and did unlawfully, willfully and corruptly demand, receive and extort, and did knowingly permit, aid, assist and encourage him, the said George W. Ray, to demand, receive and extort from one Luther Brown, executor of the last will and testament of the said Theodore Lewis, the sum of ten dollars, when the whole of said estate did not exceed the sum of $1,000, on account of the services rendered by him, and by his said clerk, on the proof and probate of the will aforesaid.

The PRESIDENT put the question to each member of the Senate, as follows:

"Senator, how say you, is the thirty-first item of the charges preferred against the accused proven?"

When each senator rose in his place, and responded as follows:

Proven — Messrs. Benedict, Chatfield, Cock, Johnson, Tiemann — 5.

Not proven — Messrs. Adams, Allen, Baker, Bowen, Dickinson, Foster, Harrower, Lewis, Lowery, McGowan, Palmer, Perry, Robertson, Weismann, Winslow, J. Wood, Woodin — 17.

The CLERK read the thirty-second charge, as follows:

"THIRTY-SECOND CHARGE.

"That on or about the 10th day of October, 1870, at the town of Norwich, in the county of Chenango and State of New York, Horace G. Prindle, then being county judge and surrogate of said county, and the will of one James M. Cassels, deceased, having been duly admitted to probate by and before the said county judge and surrogate, unmindful of the duties of his said office and of his oath of office, and in violation of the Constitution and laws of said State, did unlawfully, knowingly and corruptly demand, receive and extort from one Frederick B. Coates, executor of the last will and testament of said deceased, the sum of twenty-five dollars, on account of services rendered by him, the said surrogate, in and about the proof and probate of said will, he being entitled to a small part only (if to any portion) of said sum, as his lawful disbursements in and about said matter, and that said county judge and surrogate, also, in the same manner, demanded, received and extorted from him, the said executor, the sum of two dollars, for the personal services of said surrogate in drawing a petition for said executor, to be used on application to said surrogate for an order to publish a notice to creditors to present claims in said estate."

The PRESIDENT put the question to each member of the Senate, as follows:

"Senator, how say you, is the thirty-second item of the charges preferred against the accused proven?"

When each senator rose in his place, and responded as follows:

Proven — Messrs. Benedict, Chatfield, Cock, Tiemann — 4.

Not proven — Messrs. Adams, Allen, Baker, Bowen, Dickinson, Foster, Harrower, Lewis, Lowery, McGowan, Palmer, Perry, Robertson, Weismann, Winslow, J. Wood, Woodin — 17.

The CLERK read the thirty-third charge, as follows:

"THIRTY-THIRD CHARGE.

"That on or about the 27th day of February, 1871, at the town of Norwich, in said county of Chenango, the said Horace G. Prindle then being county judge and surrogate of said county, and letters of administration having been duly issued upon the estate of Owen Owens, deceased, by the said county judge and surrogate, unmindful of the duties of his said office and of his oath of office, and in violation of the Constitution and laws of said State, did unlawfully, knowingly, corruptly, demand, receive and extort from Frances Owens, administratrix of said estate, and widow of said deceased, the sum of thirty dollars, on account of his services as said surrogate, in and about the granting of said letters of administration and the settlement of said estate, he being entitled to a small portion only (if to any part) of said sum as his lawful disbursements in and about said matter."

The PRESIDENT put the question to each member of the Senate, as follows:

"Senator, how say you, is the thirty-third item of the charges preferred against the accused proven?"

When each senator rose in his place, and responded as follows:

Proven — Messrs. Benedict, Chatfield, Cock, Johnson, Tiemann — 5.

Not proven — Messrs. Adams, Allen, Baker, Bowen, Dickinson, Foster, Harrower, Lewis, Lowery, McGowan, Palmer, Perry, Robertson, Wagner, Weismann, Winslow, J. Wood, Woodin — 18.

The CLERK read the thirty-fourth charge, as follows:

"THIRTY-FOURTH CHARGE.

"That on the 4th day of August, 1871, at the town of Norwich, in the county of Chenango and State of New York, Horace G. Prindle, then being county judge and surrogate of said county, and the will of one Israel Chapin, deceased, having been duly admitted to probate, by and before him as such surrogate, unmindful of the duties of his said office and of his oath of office, and in violation of the Constitution and laws of said State, did unlawfully, knowingly and corruptly, for his own private gain and advantage, demand, receive and extort from Seth Chapin, executor of the last will and testament of said Israel Chapin, the sum of ten dollars, on account

of the services of said surrogate in and about the proof and probate of said will, he being entitled to a small part of said sum (if to any part thereof), on account of disbursements in and about said matter."

The PRESIDENT put the question to each member of the Senate, as follows:

"Senator, how say you, is the thirty-fourth item of the charges preferred against the accused proven?"

When each senator rose in his place, and responded as follows:

Proven — Messrs. Benedict, Chatfield, Cock, Johnson, Tiemann — 5.

Not proven — Messrs. Adams, Allen, Baker, Bowen, Dickinson, Foster, Graham, Harrower, Lewis, McGowan, Palmer, Perry, Robertson, Wagner, Weismann, Winslow, J. Wood, Woodin — 18.

The CLERK read the thirty-fifth charge, as follows:

"THIRTY-FIFTH CHARGE.

"That in or about the month of November, 1869, Horace G. Prindle, then being county judge and surrogate of the county of Chenango and State of New York, and one Oliver Myers having been duly appointed a general guardian of one Francis Hewitt, an infant, under twenty-one years of age, by him, the said surrogate, and a proceeding having been duly instituted before said surrogate in behalf of said infant to compel said guardian to render an account of his guardianship, and such proceedings having been duly heard and concluded by and before said surrogate, said surrogate, unmindful of the duties of his said office and of his oath of office, and in violation of the Constitution and laws of said State, and for his own private gain and advantage, did demand, receive and extort from Charles A. Fuller, attorney for the said infant upon said proceedings, the sum of five dollars on account of his services as such surrogate in and about the matter of the accounting aforesaid, he being entitled to no part thereof."

The PRESIDENT put the question to each member of the Senate, as follows:

"Senator, how say you, is the thirty-fifth item of the charges preferred against the accused proven?"

When each member rose in his place, and responded as follows:

Proven — Messrs. Benedict, Chatfield, Cock, Johnson, Tiemann — 5.

Not proven — Messrs. Adams, Allen, Baker, Bowen, Dickinson, Foster, Graham, Harrower, Lewis, McGowan, Perry, Robertson, Wagner, Weismann, Winslow, J. Wood, Woodin — 17.

The CLERK read the thirty-sixth, forty-second, forty-fourth, forty-fifth and fifty-first charges, as follows:

"THIRTY-SIXTH CHARGE.

"That on or about the 12th day of October, A. D. 1870, at the town of Norwich, in the said county of Chenango, Horace G. Prindle, then being county judge and surrogate of the said county, and letters of administration having been duly issued by him as such surrogate, upon the estate of Wesley Powers, deceased, and also letters of guardianship having been duly issued by said surrogate to one Ceylon D. Brown, appointing him guardian of the youngest daughter of said Wesley Powers, an infant, unmindful of the duties of his said office, and of his oath of office, and in violation of the Constitution and laws of said State, did willfully, corruptly and unlawfully demand, receive and extort from the said Ceylon D. Brown the sum of twenty dollars on account of the services of said surrogate in the granting of said letters of administration and said letters of guardianship, he being entitled to a small part only (if to any part) of said sum as his lawful disbursements in and about said matters."

The PRESIDENT put the question to each member of the Senate, as follows:

"Senator, how say you, is the thirty-sixth item of the charges preferred against the accused proven?"

When each senator rose in his place, and responded as follows:

Not proven — Messrs. Adams, Allen, Baker, Benedict, Bowen, Chatfield, Cock, Dickinson, Foster, Graham, Harrower, Johnson, Lewis, Lowery, McGowan, Palmer, Perry, Robertson, Tiemann, Wagner, Weismann, Winslow, J. Wood, Woodin — 24.

"FORTY-SECOND CHARGE.

"That in or about the month of April, 1871, at the town of Norwich, county of Chenango and State of New York, Horace G. Prindle, then being county judge and surrogate of said county of Chenango, and having one George W. Ray, a clerk in his said office, and performing the duties of a clerk to him, the said surrogate, and the will of one Andrew B. Slater, deceased, having been duly admitted to probate by and before said surrogate, unmindful of the duties of his said office and of his oath of office, and in violation of

the Constitution and laws of said State, did unlawfully, knowingly and corruptly allow, permit and encourage the said George W. Ray (he being then and there a clerk to said surrogate as aforesaid) to practice as an attorney and counselor at law before him, the said surrogate, and unlawfully, willfully and corruptly demand, receive and extort, and did knowingly permit, aid, assist and encourage the said George W. Ray to demand, receive and extort from Sarah Slater, sole executrix and widow of said deceased, the sum of fifteen dollars, for and on account of the services and disbursements of said surrogate and of his said clerk in and about said matter, he being entitled to a small part thereof as lawful disbursements in said matter."

The PRESIDENT put the question to each member of the Senate, as follows:

"Senator, how say you, is the forty-second item of the charges preferred against the accused proven?"

When each senator rose in his place, and responded as follows:

Not proven—Messrs. Adams, Allen, Baker, Benedict, Bowen, Chatfield, Cock, Dickinson, Foster, Graham, Harrower, Johnson, Lewis, Lowery, McGowan, Palmer, Perry, Robertson, Tiemann, Weismann, Winslow, J. Wood, Woodin—24.

"FORTY-FOURTH CHARGE.

"That on the 4th day of November, 1868, at the town of Norwich, county of Chenango and State of New York, Horace G. Prindle, then being county judge and surrogate of the said county of Chenango, and the will of one Thomas Snow having been duly admitted to probate by and before him as such surrogate, unmindful of the duties of his said office, and of his oath of office, and in violation of the Constitution and laws of said State, did unlawfully, knowingly and corruptly demand, receive and extort, and willfully aid and assist in demanding, receiving and extorting from one David Graves, who was then acting as the agent of Phœbe Snow, widow and executrix of the said deceased, the sum of twenty-five dollars, on account of his services and disbursements in and about the probate of said will, he being entitled to a small part of said sum only (if to any part of the same), as his lawful disbursements in and about said matter."

The PRESIDENT put the question to each member of the Senate, as follows:

"Senator, how say you, is the forty-fourth item of the charges preferred against the accused proven?"

When each senator rose in his place, and responded as follows:

Not proven—Messrs. Adams, Allen, Baker, Benedict, Bowen, Chatfield, Cock, Dickinson, Foster, Graham, Harrower, Johnson, Lewis, Lowery, McGowan, Palmer, Perry, Robertson, Tiemann, Wagner, Weismann, Winslow, J. Wood, Woodin—24.

"FORTY-FIFTH CHARGE.

"That on or about the 31st day of July, 1869, at the town of Norwich, in the county of Chenango and State of New York, Horace G Prindle, then being county judge and surrogate of said county, and the will of Ichabod D. Avery, deceased, having been duly admitted to probate by and before said surrogate, unmindful of the duties of his said office, and his oath of office, and in violation of the Constitution and laws of this State, having one George W. Ray in the office of said surrogate and performing the duties of a clerk to said surrogate, did willfully, corruptly and unlawfully permit and allow said George W. Ray (he then being a clerk to said surrogate aforesaid) to practice as an attorney and counselor at law before him, the said surrogate, and did corruptly, unlawfully and knowingly demand, receive and extort, and willfully aid and assist in demanding, receiving and extorting from Eliza Avery, executrix of said deceased, the sum of twenty-five dollars, on account of the services of said surrogate and of his said clerk on the probate of said will, he being entitled to only a small part thereof (if to any part of the same) as his lawful disbursements in said matter."

The PRESIDENT put the question to each member of the Senate, as follows:

"Senator, how say you, is the forty-fifth item of the charges preferred against the accused proven?"

When each senator rose in his place, and responded as follows:

Not proven—Messrs. Adams, Allen, Baker Benedict, Bowen, Chatfield, Cock, Dickinson, Foster, Graham, Harrower, Johnson, Lewis, Lowery, McGowan, Palmer, Perry, Robertson, Tiemann, Wagner, Weismann, Winslow, J. Wood, Woodin—24.

"FIFTY-FIRST CHARGE.

"That the said Horace G. Prindle, being such county judge and surrogate of the said county of Chenango, at the town of Norwich, in said county, and at various and numerous times during the years 1864, 1865, 1866, 1867, 1868, 1869, 1870 and 1871, the particular time or times being unknown, in violation of the Constitution and laws of said State and of his oath of office, has willfully, unlawfully and corruptly charged and received fees and compensation other than

such as are provided by law for official services performed by him as such county judge and surrogate."

The PRESIDENT put the question to each member of the Senate, as follows:

"Senator, how say you, is the fifty-first item of the charges preferred against the accused proven?"

When each senator rose in his place, and responded as follows:

Not proven—Messrs. Adams, Allen, Baker, Benedict, Bowen, Chatfield, Cock, Dickinson, Foster, Graham, Harrower, Johnson, Lewis, Lowery, McGowan, Palmer, Perry, Robertson, Tiemann, Wagner, Weismann, Winslow, J. Wood, Woodin—24.

The CLERK read the thirty-seventh charge, as follows:

"THIRTY-SEVENTH CHARGE.

"That on the 7th day of July, 1870, at the town of Norwich, in the county of Chenango and State of New York, Horace G. Prindle, then being county judge and surrogate of said county, and letters of administration having been duly issued by him upon the estate of Adelaide E. Parker, deceased, and letters of guardianship having been duly issued by said surrogate to Timothy D. Parker, husband of said deceased, appointing him guardian of an infant child of said deceased, and the estate of said deceased altogether amounting to the sum of $1,000 only, unmindful of the duties of his said office and of his oath of office, and in violation of the Constitution and laws of said State, did corruptly, knowingly and unlawfully demand, receive and extort from said Timothy D. Parker, administrator of said deceased, the sum of ten dollars, on account of the services of said surrogate in and about the matter aforesaid, he being entitled to a small part only (if to any part thereof), as his lawful disbursements in and about said matter."

The PRESIDENT put the question to each member of the Senate, as follows:

"Senator, how say you, is the thirty-seventh item of the charges preferred against the accused proven?"

When each senator rose in his place, and responded as follows:

Proven—Messrs. Benedict, Chatfield, Cock, Johnson, Tiemann—5.

Not proven—Messrs. Adams, Allen, Baker, Bowen, Dickinson, Foster, Graham, Harrower, Lewis, Lowery, McGowan, Perry, Robertson, Wagner, Weismann, Winslow, J. Wood, Woodin—18.

The CLERK read the thirty-eighth charge, as follows:

"THIRTY-EIGHTH CHARGE.

"That in or about the month of September, A. D. 1871, at the town of Norwich, in the county of Chenango and State of New York, Horace G. Prindle, then being county judge and surrogate of the said county of Chenango, and letters of administration having been duly issued by him as such surrogate upon the estates of Orrin Converse and Susan Godfrey, deceased, unmindful of the duties of his said office and of his oath of office, and in violation of the Constitution and laws of said State, did willfully, unlawfully and corruptly, for his own private gain and advantage, demand, receive and extort from Samuel A. Gifford, administrator of each of said estates, the sum of twenty dollars for his services as such surrogate, upon the final settlement of the accounts of the administrator of the said estates, and did, also, at the same time and place, corruptly and unlawfully audit and allow to one James W. Glover, Esq., attorney and counselor at law, employed by said administrator upon such final settlements, the sum of $100 for his services upon such final accounting in both of said estates, such sum being largely in excess of the charges authorized by law for the compensation of said attorney, which fact said surrogate at the time well knew."

The PRESIDENT put the question to each member of the Senate, as follows:

"Senator, how say you, is the thirty-eighth item of the charges preferred against the accused proven?"

When each senator rose in his place, and responded as follows:

Proven—Messrs. Chatfield, Tiemann—2.

Not proven—Messrs. Adams, Allen, Baker, Benedict, Bowen, Cock, Dickinson, Foster, Graham, Harrower, Johnson, Lewis, Lowery, McGowan, Perry, Robertson, Wagner, Weismann, Winslow, J. Wood, Woodin—21.

The CLERK read the thirty-ninth charge, as follows:

"THIRTY-NINTH CHARGE.

"That on the 22d day of May, 1871, at the town of Norwich, in the county of Chenango, Horace G. Prindle, being county judge and surrogate of said county, and the last will and testament of Thomas Milner, deceased, having been duly admitted to probate by and before said surrogate, did, unmindful of his duties and of his oath of office, willfully, corruptly and unlawfully, for his own private gain and advantage, demand, receive and extort from John Mitchell, executor of the last will and testament of said deceased, the sum of thirty-five dollars, on account of the services of said surrogate in and

about the proof and probate of said will, and the final settlement of the account of said John Mitchell, as executor of said estate, he being entitled to a small part thereof only (if to any part of the same), as his lawful fees and disbursements in and about said matter."

The PRESIDENT put the question to each member of the Senate, as follows:

"Senator, how say you, is the thirty-ninth item of the charges preferred against the accused proven?"

When each senator rose in his place, and responded as follows:

Proven — Messrs. Benedict, Chatfield, Cock, Johnson, Tiemann — 5.

Not proven — Messrs. Adams, Allen, Baker, Bowen, Dickinson, Foster, Graham, Harrower, Lowery, McGowan, Perry, Robertson, Weismann, Winslow, J. Wood, Woodin — 16.

The CLERK read the fortieth charge, as follows:

"FORTIETH CHARGE.

"That on the 5th day of September, 1870, at the town of Norwich, in the county of Chenango and State of New York, Horace G. Prindle, then being county judge and surrogate of said county, and having one George W. Ray, a clerk in his office and performing the duties of clerk to him, the said surrogate, and the will of one James Ferguson, deceased, having been duly admitted to probate by and before said surrogate, unmindful of the duties of his said office and of his oath of office, and in violation of the Constitution and laws of said State, did unlawfully and corruptly allow, permit and encourage the said George W. Ray (he being then and there as clerk to said surrogate as aforesaid), to practice as an attorney and counselor at law before him, the said surrogate, and did unlawfully, willfully and corruptly appoint him, the said George W. Ray, a special guardian, or guardian *ad litem* of an infant child of said James Ferguson, deceased, to look after the interests of said infant upon the probate of said will, knowing that said George W. Ray was then employed as an attorney and counselor at law for the executor of the will of said deceased, upon whose application said probate was had, and did unlawfully, willfully and corruptly demand, receive and extort, and did knowingly permit, aid and assist him, the said George W. Ray, to demand, receive and extort from Ira Watson, 2d, one of the executors of said last will and testament, the sum of fifteen dollars, for and on account of services and disbursements of said surrogate and his said clerk, in and about the proof and probate of said will, he

being entitled to a small part thereof only (if to any part), as his lawful disbursements in said matter."

The PRESIDENT put the question to each member of the Senate, as follows:

"Senator, how say you, is the fortieth item of the charges preferred against the accused proven?"

When each senator rose in his place, and responded as follows:

Proven — Messrs. Benedict, Chatfield, Cock, Johnson, Tiemann — 5.

Not proven — Messrs. Adams, Allen, Baker, Bowen, Dickinson, Foster, Graham, Harrower, Lewis, Lowery, McGowan, Perry, Robertson, Wagner, Weismann, Winslow, J. Wood, Woodin — 18.

The CLERK read the forty-first charge, as follows:

"FORTY-FIRST CHARGE.

"That on the 29th day of August, 1870, at the town of Norwich, county of Chenango and State of New York, Horace G. Prindle, then being county judge and surrogate of said county of Chenango, and having one George W. Ray, a clerk in his said office, and performing the duties of a clerk to him, the said surrogate, and the will of one William Winter, deceased, having been duly admitted to probate by and before said surrogate, unmindful of the duties of his said office and of his oath of office, and in violation of the Constitution and laws of State, did unlawfully, knowingly and corruptly allow, permit and encourage the said George W. Ray (he being then and there a clerk to said surrogate as aforesaid) to practice as an attorney and counselor at law before him, the said surrogate, and did unlawfully, willfully and corruptly demand, receive and extort, and did knowingly permit, aid, assist and encourage him, the said George W. Ray, to demand, receive and extort from one Samuel P. Thomas, one of the executors of said last will and testament, the sum of thirty-one dollars and twenty-seven cents, on account of the services and disbursements of said surrogate and his said clerk in and about the probate of said will, he being entitled to a small portion only (if to any part) of said sum as his lawful disbursements in and about said matter."

The PRESIDENT put the question to each member of the Senate, as follows:

"Senator, how say you, is the forty-first item of the charges preferred against the accused proven?"

When each senator rose in his place, and responded as follows:

Proven — Messrs. Benedict, Chatfield, Cock, Johnson, Tiemann — 5.

Not proven — Messrs. Adams, Allen, Baker, Bowen, Dickinson, Foster, Graham, Harrower, Lewis, Lowery, McGowan, Perry, Robertson, Wagner, Weismann, Winslow, J. Wood, Woodin — 18.

The CLERK read the forty-third charge, as follows:

"FORTY-THIRD CHARGE.

"That on the 28th day of August, 1869, at the town of Norwich, in the county of Chenango, and State of New York, Horace G. Prindle, then being county judge and surrogate of said county, and the will of one Robert Knowles, deceased, having been duly admitted to probate by and before said surrogate, unmindful of the duties of his said office and of his oath of office, and in violation of the Constitution and laws of said State, did willfully, corruptly, and for his own private gain and advantage, demand, receive and extort, and willfully aid and assist in demanding, receiving and extorting from William Browning, executor of the last will and testament of said deceased, the sum of twenty-seven dollars and fifty cents, on account of the services and disbursements of said surrogate in and about the probate of said will, he being entitled to a small part thereof only (if to any part of the same), as his lawful disbursements in and about said matter."

The PRESIDENT put the question to each member of the Senate, as follows:

"Senator, how say you, is the forty-third item of the charges preferred against the accused proven?"

When each senator rose in his place, and responded as follows:

Proven — Messrs. Benedict, Chatfield, Cock, Tiemann — 4.

Not proven — Messrs. Adams, Allen, Baker, Bowen, Dickinson, Foster, Graham, Harrower, Lewis, Lowery, McGowan, Perry, Robertson, Wagner, Weismann, Winslow, J. Wood, Woodin — 18.

The CLERK read the forty-sixth charge, as follows:

"FORTY-SIXTH CHARGE.

"That on or about the 15th day of August, A. D. 1868, at the town of Norwich, in the county of Chenango and State of New York, Horace G. Prindle, then being county judge and surrogate of said county, and the will of one Horace P. Hadlock, deceased, having been duly admitted to probate by and before him as such surrogate,

unmindful of the duties of his said office, and of his oath of office, and in violation of the Constitution and laws of said State, did unlawfully, knowingly and corruptly demand, receive and extort from one Maria Hadlock, administratrix, with the will annexed, of the estate of said Horace P. Hadlock, the sum of thirty-five dollars, for and on account of the services of said surrogate in and about the proof and probate of said will, he being entitled to a small part thereof only (if to any part of the same) on account of his lawful disbursements in said matter."

The PRESIDENT put the question to each member of the Senate, as follows:

"Senator, how say you, is the forty-sixth item of the charges preferred against the accused proven?"

When each senator rose in his place, and responded as follows:

Proven — Messrs. Benedict, Chatfield, Cock, Tiemann — 4.

Not proven — Messrs. Adams, Allen, Baker, Bowen, Dickinson, Foster, Graham, Harrower, Lewis, Lowery, McGowan, Perry, Robertson, Wagner, Weismann, Winslow, J. Wood, Woodin — 18.

The CLERK read the forty-seventh charge, as follows:

"FORTY-SEVENTH CHARGE.

"That, at the town of Norwich, county of Chenango and State of New York, between the 27th day of July, 1870, and the 24th day of December, 1870, Horace G. Prindle, then being county judge of said county of Chenango, certain proceedings being then and there pending before him as such county judge, under and in pursuance of chapter 907 of the Laws of 1869, for the State of New York, to bond the town of Smithville in aid of the Central Valley Railroad Company, unmindful of the duties of his said office, and of his oath of office, and in violation of the Constitution and laws of said State, did, willfully, corruptly, and unlawfully cause to be made known to Charles P. Tarbell, Silas L. Rhodes, and James Hazzard and divers other persons that he should and would decide and adjudge that a majority of the tax payers in the said town of Smithville, representing a majority of the taxable property of said town, as shown by the then last preceding tax list or assessment roll, had assented to the bonding of said town in aid of said railroad; that he would file his judgment in the matter with the clerk of said county on the 24th day of December, 1870, and that he, the said county judge, would appoint said Charles B. Tarbell, Silas L. Rhodes and James Hazzard commissioners of said

town, to issue the bonds and carry into effect his said judgment, in advance of his said judgment, which was not rendered and made public until said 24th day of December, 1870, whereby said Charles P. Tarbell, Silas L. Rhodes and James Hazzard and divers other persons, who were aiding the interests of said railroad company in bonding said town, were enabled to gain an undue advantage over the contestants in said proceedings, by having the bonds of said town, to the amount of $83,000, printed, prepared and ready to be transferred to innocent holders upon said 24th day of December, 1870, as soon as the judgment of said county judge should be filed in the clerk's office of said county, to the end that the proceedings had before said county judge might not be reviewed, and the issuing of the aforesaid bonds restrained and prevented, and that on said 24th day of December, 1870, said county judge did adjudge and decide that the aforesaid town was legally bonded in aid of said railroad, and then and there willfully and corruptly appointed said Charles P. Tarbell, Silas L. Rhodes and James Hazzard commissioners of said town, to issue said bonds and carry into effect his aforesaid judgment."

The PRESIDENT put the question to each member of the Senate, as follows:

"Senator, how say you, is the forty-seventh item of the charges preferred against the accused proven?"

When each senator rose in his place, and responded as follows:

Proven — Mr. Johnson — 1

Not proven — Messrs. Adams, Allen, Baker, Benedict, Bowen, Chatfield, Cock, Dickinson, Foster, Graham, Harrower, Lewis, Lowery, McGowan, Perry, Robertson, Tiemann, Wagner, Weismann, Winslow, J. Wood, Woodin — 22.

The CLERK read the forty-eighth charge, as follows:

"FORTY-EIGHTH CHARGE.

"That the said Horace G. Prindle, being such county judge and surrogate of the county of Chenango, at the town of Norwich, in the said county, during the years 1868, 1869, 1870 and 1871, having one George W. Ray as a clerk in his said office, and performing the duties of a clerk to him as such county judge and surrogate, unmindful of the duties of his said office, and of his oath of office, did, continuously, during said years and each of them, in various and many actions and proceedings pending before him as such county judge and surrogate, knowingly, unlawfully and corruptly allow, permit

and encourage the said George W. Ray, he being then and there such clerk as aforesaid, to practice as an attorney and counselor at law, engaged in the actions and proceedings aforesaid, so pending as aforesaid, in violation of the Constitution and laws of said State, and to the scandal and disgrace of the administration of justice in said county."

When Senator ALLEN'S name was called, he arose and said:

Mr. President: Substantially proven.

Senator CHATFIELD — Clearly proven.

Senator GRAHAM — Not proven clearly.

Senator McGOWAN — Substantially not proven.

The PRESIDENT put the question to each member of the Senate, as follows:

"Senator, how say you, is the forty-eighth item of the charges preferred against the accused proven?"

When each senator rose in his place, and responded as follows:

Proven — Messrs. Allen, Benedict, Chatfield, Cock, Johnson, Lowery, Tiemann, Wagner, Weismann — 9.

Not proven — Messrs. Adams, Baker, Bowen, Dickinson, Foster, Graham, Harrower, Lewis, McGowan, Robertson, Winslow, J. Wood, Woodin — 13.

The CLERK read the forty-ninth charge, as follows:

"FORTY-NINTH CHARGE.

"That said Horace G. Prindle, being such county judge and surrogate as aforesaid, at the town of Norwich, in the said county of Chenango, on or about the 19th day of May, A. D. 1871, a highway having been duly laid out through lands of one Daniel O. Gale, situate in the town of Macdonough, in the said county of Chenango, by an order of the commissioners of highways of said town of Macdonough, and application being then and there made to the county court of said county for the appointment of commissioners to assess the damages of the said Daniel O. Gale, by reason of the laying out of the said highway as aforesaid, unmindful of the duties of his said office and of his oath of office, and in violation of the Constitution and laws of said State, did willfully, unlawfully and corruptly charge, demand and receive from Perry Tillson, one of the commissioners of highways of said town of Macdonough, the sum of ten dollars for and on account of the services of himself, the said county judge, in drawing the application and papers necessary to be drawn and used to complete the appointment of such commissioners as aforesaid, and

for the counsel and advice of said county judge in and about said matters of the appointment of said commissioners by the county court of said county, he knowing that such appointment was to be made and said papers were to be used by and before himself as such county judge."

Senator WOODIN — Mr. President: The Senate will remember that I was not present during any part of the time when the evidence for the defense was taken. Prior to taking the vote on this charge, I would like to have the chair, and I believe senators will be glad also, refer to the evidence taken of Judge Prindle upon this charge read to the Senate.

Senator LEWIS — Page 910.

"Q. Have you ever paid any particular attention to that part of the business? A. No; I had all I could attend to without looking to matters of that kind; while you are speaking about my drawing papers, in regard to drawing the petition for appointment of commissioners, I stated to Mr. Tillotson he came there in the first place and told me what he wanted, and wanted this question examined, whether a person owning land alongside of a proposed highway, where he was compelled to build a fence, and they did not take any of his land, whether he was entitled to have any damages appraised, and I told him he had better go to a lawyer and have him examine the question, and draw up the papers, and he urged me to do it, and wanted to know what it would cost, and I told him probably a lawyer would charge $10, and he urged me to do it, and I examined that question pretty thoroughly, and it is quite a question, as any lawyer knows who has examined it, and afterward drew his paper, and he came and paid me $10; twelve shillings of that I paid to the clerk; the petition comprised nearly two sheets, with the description and all, and then the order that was drawn afterward was a lengthy order; it did not occur to me there was any thing improper in my examining that question; it did not occur to me about the suit, or that there was any impropriety in regard to it; if I had charged him $10 for what I did on the examination there, and charge for, he would not have paid any charge for it; there was nothing that I was to act upon afterward in regard to it, and the matter couldn't come before me in any way possibly."

Senator WOODIN — Is there any other evidence, Senator Lewis?

Senator LEWIS — Pages 488 and 489.

Senator WOODIN — By him, I mean?

Senator LEWIS — No, sir, I think not.

Senator BENEDICT — At page 488.

"Q. You went to him at one time for the transaction of some business in reference to your duties as highway commissioner? A. I did.

Q. State what that was? A. It was to get commissioners appointed to assess damages on a road laid out in that town.

Q. Who was present at the time you went to him on that business? A. I think the sheriff of Chenango county, Mr. Roripaugh.

Q. Any one else? A. No one else in the room, I think, except Mr. Prindle.

Q. Did you employ any attorney in the case? A. No.

Q. You went directly to Judge Prindle? A. I did.

Q. What paper did he make out for you? A. He drew up a paper to go to the court and get the commissioners appointed.

Q. To go to what court? A. The court of Chenango county.

Q. Who was that court held by? A. Judge Prindle.

Q. Then he drew the paper to be used before him as judge? A. Yes, sir.

Q. What did he charge you for drawing the paper? A. For doing the whole business I paid him $10.

Q. Was the business done entirely before him? A. It was.

Q. When did you pay him? A. I paid him at the time.

Q. What was the date? A. The 1st of June, 1871.

By Mr. GLOVER:

Q. How long were you there doing that business? A. I was in Norwich all day, but I was not in the room more than a few minutes.

Q. This work was going on while you were out? A. Yes, sir; while I was out.

Q. There were some law questions in it to examine into? A. I asked him some questions; I asked him in regard to a man's damages that the road did not touch, but who was subject to build a fence along the road that he would not have had to build only on account of it.

Q. That was the question that you asked him to look up? A. That was the question I asked him.

Q. And that was all? A. Yes, sir.

Q. You were entirely satisfied with the transaction? A. Well, yes; I found no fault about it; I paid him.

By Mr. STANTON:

Q. You did not know but what it was proper, did you? A. I supposed it was."

Then the testimony of Uriah Roripaugh, which, I think, is the next witness:

"Q. Did he say for what amount he would do it? A. He said it would cost ten dollars.

Q. Did you see the money paid? A. I did not.

PERRY TILSON recalled and examined:

By Mr. STANTON:

Q. Who appointed those commissioners? A. Judge Prindle.

By Mr. GLOVER:

Q. Who were appointed the commissioners, and from what towns were they appointed? A. The commissioners were Lorin Holdrich, Warren Loomis and Silenus Brown."

When Senator TIEMANN's name was called, he arose and said: Mr. President—I vote substantially proven.

Senator LEWIS—Mr. President: In looking over this testimony I am disposed to think the balance of evidence is against the judge on this proposition decidedly, and shall vote proven.

Senator WOODIN—Mr. President: I think that Judge Prindle had a right, as counselor at law, to examine this question and charge for it. If he made any mistake at all, it was in hearing the case or having any thing to do with it officially afterward. The charge is not for hearing the case in which he had acted as attorney and counsel, but a very different one. I think the charge might have been drawn so that the proof in the case would have fully supported it. I think he committed a great indiscretion in having any thing to do with the case after he examined it; after he charged for the examination. I shall vote upon this charge substantially proven, with the right to change my vote upon it before we get through if I find there is more evidence in the case.

The PRESIDENT put the question to each member of the Senate, as follows:

"Senator, how say you, is the forty-ninth item of the charges preferred against the accused proven?"

When each senator rose in his place, and responded as follows:

Proven—Messrs. Adams, Allen, Baker, Benedict, Chatfield, Cock, Dickinson, Harrower, Johnson, Lewis, Lowery, McGowan, Palmer, Perry, Robertson, Tiemann, Wagner, Weismann, Winslow, Woodin—20.

Not proven—Messrs. Foster, Graham, J. Wood—3.

The CLERK read the fiftieth charge, as follows:

"FIFTIETH CHARGE.

"That the said Horace G. Prindle, being such county judge and surrogate of the said county of Chenango, at the town of Norwich, in the said county of Chenango, at various and numerous times during the years 1864, 1865, 1866, 1867, 1868, 1869, 1870 and 1871, the particular time or times being unknown, unmindful of the duties of his said office and of his oath of office, and in violation of the Constitution and laws of said State, unlawfully, willfully and corruptly has suffered and permitted himself to be employed as counsel, solicitor and attorney, both for and against executors, administrators, guardians and minors in civil actions, he then and there having jurisdiction by law over such executors, administrators, guardians and minors, and over the accounts of said executors, administrators and guardians as county judge and surrogate as aforesaid."

When Senator WEISMANN's name was called, he arose and said:

Mr. President: I will state that it is proven that he performed certain work, but it is not proven that he performed such work willfully or corruptly. I vote, therefore, not proven.

The PRESIDENT put the question to each member of the Senate, as follows:

"Senator, how say you, is the fiftieth item of the charges preferred against the accused proven?"

When each senator rose in his place, and responded as follows:

Proven — Messrs. Allen, Benedict, Chatfield, Cock, Dickinson, Johnson, Lowery, Tiemann, Wagner—9.

Not proven — Messrs. Adams, Baker, Bowen, Foster, Graham, Harrower, Lewis, McGowan, Palmer, Perry, Robertson, Weismann, Winslow, J. Wood, Woodin—15.

The CLERK read the fifty-second charge, as follows:

"FIFTY-SECOND CHARGE.

"That the said Horace G. Prindle, being such county judge and surrogate of the said county of Chenango, at the town of Norwich, in the said county, on the 17th day of August, 1870, in violation of the Constitution and laws of said State and of his oath of office, and the last will and testament of one Leonard Bowdish having been duly admitted to probate by and before him as such county judge and surrogate, did willfully, unlawfully and corruptly tax, allow, and by order grant, out of the estate of said Leonard Bowdish, deceased, and

did require Nancy Bowdish, widow of said deceased, and executrix of said estate, to pay out of said estate to one George W. Ray, and did aid and assist the said George W. Ray (who was then and there a clerk in the office of said surrogate), to demand, receive and extort from said executrix, and out of said estate, the sum of $225, on account of the services and expenses of said George W. Ray, as attorney for one C. G. Bowdish, and of expenses of said C. G. Bowdish, in and about the proof and probate of the will of said deceased, before him, the said county judge and surrogate."

The PRESIDENT put the question to each member of the Senate, as follows:

"Senator, how say you, is the fifty-second item of the charges preferred against the accused proven?"

When each senator rose in his place, and responded as follows:

Proven — Messrs. Benedict, Chatfield, Cock, Johnson, Tiemann — 6.

Not proven — Messrs. Adams, Baker, Bowen, Dickinson, Foster, Graham, Harrower, Lewis, Lowery, McGowan, Palmer, Perry, Robertson, Weismann, Winslow, J. Wood, Woodin—17.

The CLERK read the fifty-third charge, as follows:

"FIFTY-THIRD CHARGE.

"That the said Horace G. Prindle, being such county judge and surrogate of the said county of Chenango, at the town of Norwich, in the said county of Chenango, on the 14th day of October, A. D. 1869, in violation of the Constitution and laws of said State, and of his oath of office, letters of administration having been duly issued by him as such surrogate, upon the estate of Lewis Humphrey, deceased, to one Hiram R. Humphrey, unlawfully, willfully and corruptly did permit and allow one George W. Ray to demand and receive (he being then and there a clerk in the office of him, the said surrogate), and did aid and assist him, the said George W. Ray, in demanding and receiving from said Hiram R. Humphrey, the sum of four dollars, on account of the services of said George W. Ray, in drawing the necessary papers, aside from the petition, required for the granting and issuing of letters of administration upon the estate of said deceased, by him, the said county judge and surrogate."

The PRESIDENT put the question to each member of the Senate, as follows:

"Senator, how say you, is the fifty-third item of the charges preferred against the accused proven?"

When each senator rose in his place, and responded as follows:

Proven — Messrs. Benedict, Chatfield, Tiemann — 3.

Not proven — Messrs. Adams, Allen, Baker, Bowen, Cock, Dickinson, Foster, Graham, Harrower, Lewis, Lowery, McGowan, Palmer, Perry, Robertson, Wagner, Weismann, Winslow, J. Wood, Woodin — 20.

The CLERK read the fifty-fourth charge, as follows:

"FIFTY-FOURTH CHARGE.

"That the said Horace G. Prindle, being county judge and surrogate of the said county of Chenango, at the town of Norwich, in said county, on the 18th day of February, 1871, in violation of the Constitution and laws of said State, and of his oath of office, letters of administration having been duly issued by him as such county judge and surrogate, upon the estate of Lewis Humphrey, deceased, did unlawfully, willfully and corruptly demand, receive and extort, and did aid and assist in demanding, receiving and extorting from Hiram R. Humphrey, administrator of said estate, the sum of forty dollars for and on account of the services of one George W. Ray (who was then and there a clerk to said surrogate, performing the duties of such clerk), and on account of the services and disbursements of him, the said county judge and surrogate, on the final settlement of the accounts of the said Hiram R. Humphrey, as administrator as aforesaid, and the said Horace G. Prindle did unlawfully, corruptly and willfully allow, audit and pass the account of said George W. Ray for the sum aforesaid, as a claim against and one to be paid out of said estate."

The PRESIDENT put the question to each member of the Senate, as follows:

"Senator, how say you, is the fifty-fourth item of the charges preferred against the accused proven?"

When each senator rose in his place, and responded as follows:

Proven — Messrs. Chatfield, Tiemann — 2.

Not proven — Messrs. Adams, Allen, Baker, Bowen, Cock, Dickinson, Foster, Graham, Harrower, Lewis, McGowan, Palmer, Perry, Robertson, Wagner, Weismann, Winslow, J. Wood, Woodin — 19.

The PRESIDENT — Senators, you have found Horace G. Prindle guilty on the fifth, ninth, fourteenth, fifteenth, sixteenth and forty-ninth charges, by a majority of all voting.

Senator ROBERTSON — Mr. President: I do not desire to make any motion, but I suggest to senators whether we had not better have a fuller Senate than we have now, before we take the final vote. I do not desire to make any motion — but merely the suggestion. There are only twenty-two here now, according to the last vote.

Senator BENEDICT — The ninth, also, had a majority.

Senator WINSLOW — Mr. President: I would like to inquire whether there are any senators in the city that are not present?

The PRESIDENT — The fifth, ninth, fourteenth, fifteenth, sixteenth and forty-ninth as proven, by a majority of all voting upon the question, there being a quorum present.

Senator WINSLOW — Mr. President: Do I not understand there should be a quorum voting to find the charge proven?

The PRESIDENT — There was a quorum. It was a majority vote.

Senator ALLEN — Mr. President: I would like to inquire whether the rules adopted for the action of the Senate, in the investigation of these charges, do not require that a majority of all the senators should vote in favor of any charge in order to find the respondent guilty of the charge? If there is any rule on that subject, I would be glad to hear it read.

The PRESIDENT read rule seventh.

Senator LEWIS — Mr. President: There is not any question, I believe, in the mind of any senator here that in the case of Judge McCunn the final vote was taken in open session, and, for the purpose of testing the question, I move that the final vote in this case be taken with open doors.

Senator BOWEN — Mr. President: I call for the ayes and noes.

Senator LEWIS — The senator asks me if there is any reason for it. The only reason is the precedent in the trial of the McCunn case. We were sitting as a Senate, precisely as we are sitting now; and there is a very general opinion of prejudice against these private or secret sessions, in the minds of the public, and as that was the precedent in the McCunn case, there can be no reason as I see.

Senator CHATFIELD — I insist upon my motion. Mr. President: I hope that motion may prevail; I am as certain now as I was before that the whole thing in the McCunn case was with open doors. I am in favor of taking the vote in open session.

Senator BENEDICT — Mr. President: Immediately on taking the final vote to go into executive session.

The PRESIDENT — We have postponed the executive session until we get through with that.

The question was submitted with the following result:

For the affirmative — Messrs. Adams, Baker, Chatfield, Cock, Dickinson, Graham, Harrower, Johnson, Lewis, Lowery, McGowan, Murphy, Palmer, Perry, Scoresby, Tiemann, Wagner, Weismann, Winslow — 19.

For the negative — Messrs. Allen, Benedict, Bowen, Foster, Robertson, J. Wood, Woodin — 7.

Senator DICKINSON — Mr. President: I would like to know, under your ruling, what part of the votes or what part of the Senate it requires to remove Judge Prindle.

The PRESIDENT — It requires two-thirds of all the members elected. The doors will now be opened pursuant to the order of the Senate.

After the opening of the doors, the following proceedings were had:

The PRESIDENT — The Senate having found the charges against Judge Prindle proven on articles 5, 9, 14, 15, 16 and 49, they will now vote upon this question.

"Senator, how say you, shall Horace G. Prindle be removed from his office of county judge of Chenango county for the cause stated in the 5th, 9th, 14th, 15th, 16th and 49th items of the charges preferred against him, which you have found proven?"

When each senator rose in his place, and responded as follows:

When Senator LEWIS' name was called, he arose and said:

Mr. President: I ask to be excused from voting; I do not wish it to be understood by the vote that I am to cast in this case, that I think Judge Prindle is entirely free from guilt, for the reasons that have been given by myself upon the various votes, which I do not propose now to repeat; I think Judge Prindle has fallen into some errors, but they fall far short of being of a sufficiently grave character to induce me to vote for his removal; hence, I vote no.

When Senator PALMER'S name was called, he arose and said:

Mr. President: I ask to be excused from voting, and will state that substantially I agree with the views expressed by the senator from the thirty-first, and I shall be prepared to vote for a motion of censure, while I cannot see that there is enough in these charges proved to remove Judge Prindle; still, I shall be prepared to vote for a resolution of censure, or something of that sort, which we may pass after this vote is taken.

Senator WINSLOW — We have done it in the charges.

Senator PALMER — I withdraw my excuse and vote no.

Senator WOODIN — Mr. President: I ask to be excused from voting. I have voted upon three of the charges, I think, that were preferred

against Judge Prindle, sustaining the charge. I have to say now, what I said in executive session, publicly, that I do not approve of several of the acts which were charged and proved against Judge Prindle. They were violations of the statute, and, in one particular instance, known violations of the statute; although, I think, not coupled with any intent on his part to do a wrong to any interest of any individual or to the public; I refer particularly to the charge against him for neglecting, knowingly, to make a return to the board of supervisors of an itemized account of the fees received by him, during certain years, while he held the office of surrogate and county judge For a mere failure on his part to render an items account to the board of supervisors, I might not have been willing to have voted to sustain the charge; but his failure to do it, knowingly and in violation of the statute, compelled me to vote "proven" on that charge against him; therefore I thus voted. But the manner in which that subject of his account was treated between him and the board of supervisors, seems to me to take from it that intent which would characterize it as a corrupt act in a moral sense, in a strictly moral sense; I say, it takes from it that character. I do not believe that he was guilty of a corrupt act, nor that he did it with the design of defrauding his county or of defrauding any individual; nevertheless, it is a violation of the statute, and one that cannot be winked at by those whose duty it is to examine into and decide questions of that character; therefore, I make this public expression of my disapproval of his conduct in that case. I don't think it justifies the extreme penalty which this Senate is empowered to inflict upon him — to remove him from his office, together with the additional consequences to himself personally. I could not vote for his removal for the technical violation of that law. Another charge which I think I voted to sustain was the charge which he made against some persons who applied to him for counsel, for an opinion, as to a question of damages in laying out a highway. As the senator from the thirty-first stated in the executive session, the balance of proof was against him. I think that he did an indiscreet act upon that occasion, but my construction of the evidence is, that the charge was rather for advice, for counsel, in examining a question before his official action was sought for by those parties; and the charge is not for entertaining official proceedings before him, but for charging for drawing papers in a proceeding which he designed to have continued before him. That is substantially it. Now, I think he had a right to charge for examining a question of that description as an attorney and counselor

at law; and he made a mistake — he committed an indiscretion, by entertaining the proceedings which were subsequently inaugurated before him, predicated upon those papers. I shall take that charitable view and give that charitable construction to the evidence, and shall not feel that I am inconsistent by voting for his acquittal here, even though I voted to sustain that charge against him. I thought it was an indiscretion, an improper act on his part to entertain the proceedings, and that, therefore, the charge was in substance proved true. I have this much further to say, we all know, senators and the public, that this case had its origin in a severe and unprecedented political strife in the county of Chenango. We all know how bitter the feelings that are engendered in strifes of that character become. These acts were known to the public and no complaint had ever been made, but in the bitterness of a heated political contest these charges had their origin, and they have been presented here and prosecuted with great earnestness upon the witness stand and at the bar by counsel. That same feeling of bitterness has manifested itself during the entire trial. The evidence of some witnesses has been characterized somewhat by that feeling of bitterness which characterized the contest in Chenango county. Furthermore, the irregular conduct, the indiscreet acts of Judge Prindle, would form the ground-work of some of these charges; at least those charges I voted to sustain occurred some six years ago. There is no complaint that there has been a repetition of them since that time, and if we were to vote, or if we could allow ourselves to vote, for the removal of Judge Prindle from office for those acts committed some six years ago, and after his general conduct has been approved by his constituency, it is certainly no encouragement for a man that has committed an error to make an attempt at reform. I therefore withdraw my application to be excused, and vote no.

The CLERK announced the vote as follows:

For the affirmative — Messrs. Allen, Benedict, Chatfield, Cock, Johnson, Tiemann, Wagner — 7.

For the negative — Messrs. Adams, Baker, Bowen, Dickinson, Foster, Graham, Harrower, Lewis, Lowery, McGowan, Palmer, Perry, Robertson, Weismann, Winslow, J. Wood, Woodin — 17.

The PRESIDENT — Two-thirds of all the members elected to the Senate not concurring in the recommendation of the Governor for the removal of Horace G. Prindle from the office of county judge and surrogate of the county of Chenango, the charges are dismissed.

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